

**MANAGEMENT AGREEMENT**

**BY AND BETWEEN**

**USFILTER OPERATING SERVICES, INC.**

**AND THE**

**CONSOLIDATED CITY OF INDIANAPOLIS,  
DEPARTMENT OF WATERWORKS**

**As of**

**March 21, 2002**

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Exhibit 14	UDC Option and Terms Sheet for Purchase of Assets of Former Utility Data Corporation
Exhibit 15	Plan Sponsorship Agreement

## **MANAGEMENT AGREEMENT**

THIS MANAGEMENT AGREEMENT (this "Agreement") is made and entered into as of the 21<sup>st</sup> day of March, 2002, by and between USFilter Operating Services, Inc. (the "Company"), having its principal place of business at 55 Shuman Boulevard, Naperville, Illinois 60563 and authorized to do business in the State of Indiana and the CONSOLIDATED CITY OF INDIANAPOLIS, DEPARTMENT OF WATERWORKS (the "Department"), a special taxing district existing under the laws of the State of Indiana. The Department or the Company or both may be referred to herein as the "Party" or the "Parties," as the context of the usage of such term may require.

### **RECITALS:**

WHEREAS, the City of Indianapolis, Marion County (the "City"), through the Department, has recently acquired the waterworks assets of IWC Resources Corporation ("IWC"), and therefore now owns, operates and maintains a water system for the collection, purification, conveyance, treatment and storage of water and distribution of water to its customers, (together, the "Waterworks," as more particularly defined in Section 2);

WHEREAS, the Department issued a Request for Qualifications ("RFQ") on December 4, 2001 for the operation, expansion, maintenance, repair and management of the Waterworks;

WHEREAS, the Company, in response to said RFQ, submitted a Letter of Qualifications describing its experience and interest in being selected to perform such Services (defined below);

WHEREAS, the Company was notified by the Department that it met the requirements of the RFQ and was invited to submit a proposal in response to a Request for Proposals ("RFP");

WHEREAS, the Department issued an RFP on December 21, 2001 for the management of the Waterworks;

WHEREAS, the Company, in response to said RFP, submitted a proposal for the management of the Waterworks;

WHEREAS, the Department has selected the Company, pursuant to the RFP and the Company's proposal to manage the Waterworks, in accordance with the terms, conditions and provisions of this Agreement and in reliance on the Company's representations in the response to the RFP of its skill, expertise and past successful experience managing other water systems;

WHEREAS, the Department desires to engage the services of the Company for the management and the Company desires to perform such services for the compensation provided herein;

WHEREAS, Vivendi Environnement, S. A., ("Guarantor"), shall have executed, prior to the Commencement Date (as defined in Section 2), the Guarantee to guarantee the Company's performance of its obligations under this Agreement;

WHEREAS, the Company has agreed to obtain the Letter of Credit described in Article 12; and

WHEREAS, the Department expects and desires that the relationship between the Department and the Company will be a cooperative one, devoted to achieving cost-savings goals of the Department while also providing safe, economical and efficient services, meeting the needs of the current and future customers of the Waterworks, maintaining the long-term integrity of the Waterworks, assuring safe, healthful, environmentally sound, high-quality water and service while utilizing Prudent Utility Practices (as defined in Section 2).

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties hereto contained in this Agreement and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Company and the Department do hereby covenant and agree as follows:

## **SECTION 1 DOCUMENTS**

Section 1.01 Agreement Documents. The following Exhibits are attached hereto and are made a part of this Agreement. In the event of a conflict or inconsistency between or among the Exhibits and Sections of this Agreement, it is agreed that the Sections of this Agreement control over the Exhibits.

Exhibit 1	Performance Standards and Guarantees
Exhibit 2	Operations and Maintenance Standards
Exhibit 3	Waterworks Overview
Exhibit 4	Capital Outputs
Exhibit 5	Capital Project Scenarios
Exhibit 6	Department Contracts
Exhibit 7	Equipment, Materials, Supplies and Chemical Inventory
Exhibit 8	Reporting and Plan Requirements
Exhibit 9	Disclosures
Exhibit 10	Form of Guaranty
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Exhibit 12	Incentive Fee Criteria
Exhibit 13	Representation 11.01(g)
Exhibit 14	UDC Option and Terms Sheet for Purchase of Assets of Former Utility Data Corporation
Exhibit 15	Plan Sponsorship Agreement

This Agreement, together with the foregoing Exhibits, constitutes the entire Agreement between the Company and the Department with respect to the management of the Waterworks, shall govern exclusively the obligations of the Parties and shall supersede all prior negotiations, representations and agreements, written or oral, occurring prior to the date of this Agreement.

## **SECTION 2 DEFINITIONS; TERMS GENERALLY**

Section 2.01 Terms Generally. As used in this Agreement, (a) the word "or" is not exclusive, (b) the words "consent" and "approval" are synonymous and are deemed to be followed by the phrase "which shall not be unreasonably withheld or delayed," (c) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," (d) any pronoun shall include the corresponding masculine, feminine and neuter forms, (e) words in the singular number include words in the plural and vice versa unless the context of the usage of such term clearly indicates otherwise and (f) accounting terms that are used, but not otherwise defined herein, are to be construed and interpreted in accordance with "generally accepted accounting principles" and procedures (GAAP) in effect on the Contract Date (as defined in Section 2.02), as described in Accounting Standards Board SAS No. 69 and established by various pronouncements of the Accounting Principles Board, the Financial Accounting Standards Board and the American Institute of Certified Public Accountants.

Section 2.02 Definitions. For purposes of this Agreement, the following words and phrases shall have the following respective interpretations and meanings:

"Acceptable Raw Water" means all raw water, the use of which is not prohibited by Applicable Law and which does not include substances that:

- (a) create a fire or explosive hazard at the Waterworks; or
- (b) are present in concentrations that exceed concentrations detected in the five-year historical data of the Waterworks.

"Additional Payments" means the payments made by the Department to the Company for Additional Services.

"Additional Services" means the additional services, including but not limited to, construction, engineering and design, project management and inspection related to Capital Projects implemented by the Company, which shall be provided by the Company, to the extent applicable, at the rates set forth on Exhibit 4.

"Affiliate" means the Guarantor, the Company, and any corporation, partnership, joint venture or other entity controlled by, controlling or under common control with, directly or indirectly, the Guarantor, the Company or any one of such entities. Solely for purposes of Section 10.06(a), "Affiliate" shall have the meaning ascribed to it in that Section.

"Agreement" means this Management Agreement.

"Annual Increase" has the meaning ascribed to it in Section 5.02(b).

"Applicable Law(s)" means any federal, State, Department or local statute, law, municipal charter provision, regulation, ordinance, rule, mandate, judgment, order, decree, permit, code or license requirement or other governmental requirement or restriction, or any interpretation or administration of any of the foregoing by any governmental authority, which applies to the services or obligations of either Party under this Agreement, whether now or hereafter in effect.

"Asset Purchase Agreement" means the Asset Purchase Agreement by and among the City, NiSource Inc. and IWC Resources Corporation dated November 26, 2001, pursuant to which the Asset Purchase Transaction shall have been consummated.

"Asset Purchase Transaction" means the asset purchase transaction by and among the City, NiSource Inc. and IWC Resources Corporation contemplated by the Asset Purchase Agreement, whereby the City has acquired the Waterworks from IWC Resources Corporation.

"Authorized Representative(s)" means the Company's or the Department's representative and any successor designated pursuant to Section 13.06.

"Base LC Amount" has the meaning ascribed to it in Article 12.

"Billing Month" means each accounting month of the Company which is a 4/4/5 week cycle in each Billing Quarter. The first Billing Month shall begin on the Commencement Date, and (b) the first Billing Month of each Billing Year shall begin on January 1 and the last Billing Month of each Billing Year shall end on December 31, and (c) the last Billing Month shall end concurrently with the end of the term or date of termination of this Agreement.

"Billing Quarter" means a calendar quarter comprising three (3) Billing Months, except that (a) the first Billing Quarter shall commence on the Commencement Date and end on last accounting day of March, June, September or December, depending on which quarter the Commencement Date occurs and (b) the last Billing Quarter shall end concurrently with the end of the term or, as applicable, the date of termination, of this Agreement.

"Billing Year" means a calendar year comprising twelve (12) Billing Months, except that (a) the first Billing Year shall commence on the Commencement Date and end on December 31 immediately following the Commencement Date and (b) the last Billing Year shall end concurrently with the end of the term or, as applicable, the date of termination, of this Agreement.

"Board" means the board of directors of the Department.



"Bond Bank" means the Indianapolis Local Public Improvement Bond Bank.

"Bond Documents" include the terms of the Board Resolution approving the Department's municipal bonds, the tax representation certificate related thereto, the bond purchase agreement with the Bond Bank and the trust indenture securing the Bond Bank's bonds issued to purchase the Department's bonds.

"Capital Output" has the meaning ascribed to it in Exhibit 4 attached hereto.

"Capital Project" means (i) an item that will be of a long-term nature having a useful life in excess of three years, as defined by manufacturers' specifications and (ii) those items that require a modification, alteration, addition to, and or improvement to an existing facility with a construction, installation (including materials) or purchase value in excess of \$5,000 and (iii) replacement of equipment that has met or exceeded its useful life and (iv) items for construction, placement of new facilities (e.g. piping, equipment, wells, etc., including material costs) and capital purchases that significantly improve operations and or maintenance, aesthetics, long-term capital conditions or other aspects not generally associated with ongoing operations and maintenance.

A "Capital Project" shall not (i) include preventive, predictive, routine, and or periodic operations activities; (ii) include preventive, predictive, routine, and or periodic maintenance activities; (iii) allow the combination of a series of smaller projects or costs items to meet the \$5,000 threshold, unless deemed eligible by the Department prior to the commencement of the work activity.

Capital Project shall also include, but not necessarily be limited to, replacement of the whole or parts of Equipment that has met or exceeded its useful life, unless such replacement was a result of poor maintenance practices of the Company, provided such replacement of parts extends the useful life of the Equipment three years or more or in the case of the replacement of the whole of the Equipment, such replaced whole has a life of three years or more. In those instances where the poor maintenance practices of the Company resulted in the replacement, the Company shall share in the expense of the replacement in a proportion to be determined by the Department, based upon the Company's lack of performance. Exhibit 5 sets forth examples of Capital Projects and Operations and Maintenance projects.

"Change in Control" has the meaning ascribed to it in Section 10.08.

"Change in Law" means the enactment, adoption, promulgation, modification, repeal or change after the Contract Date of any Applicable Law which (a) necessitates or makes advisable a Capital Project, (b) modifies the Company's guarantees under this Agreement, (c) increases the Service Fee by establishing requirements with respect to the operation or maintenance of the Waterworks, (d) otherwise impacts the Company's ability to perform its obligations under this Agreement, or (e) increases or decreases the rate of State gross retail tax or the rate of the use tax

or any other tax and results in increased or decreased operation expenses to the Company, which, in the case of (a), (b), (c), or (d), are more burdensome than the most stringent requirements:

- (1) in effect on the Contract Date;
- (2) agreed to by the Department as of the Contract Date in any applications for official permits, licenses or approvals to or for the Waterworks, other than any requirements set forth in said applications to comply with Applicable Laws;
- (3) in the Performance Guarantees in Exhibit 1; or
- (4) in the Operations and Maintenance Standards in Exhibit 2,

and which, in the case of (e), any changes on the operation expenses of the Company as a result of such increase or decrease in taxes must be: (i) approved by the Board; (ii) minimized by the Company using its best efforts; and (iii) considered by the Parties to be a re-negotiation of this Agreement, which shall comply with the provisions of the Revenue Procedure.

For purposes of this definition, no enactment, adoption, promulgation or modification of Applicable Laws shall be considered a Change in Law if, as of the Contract Date, such Applicable Law would have directly affected the continued operation, maintenance, repair or management of the Waterworks by the Department after the Commencement Date in the absence of this Agreement and either (i) such Applicable Law was officially proposed by the responsible agency and thereafter had become effective without further action, or (ii) the adoption, enactment or promulgation process by the appropriate federal, State or local body commenced before the Contract Date, and with respect to which, (A) the comment period expired on or before the Contract Date, (B) any required hearings concluded on or before the Contract Date in accordance with applicable administrative procedures, and (C) it thereafter became effective without further action.

The definition of "Change in Law" shall include changes in applicable tax rules and regulations (including taxes due on Company's income), provided, however, that the Company shall use reasonable efforts to minimize the effects of any such changes, including, without limitation, utilizing Department resources and assistance, as necessary. Any material increase in the Company's cost to perform the Services resulting from a Change in Law in taxes shall be subject to Board approval and shall qualify for a re-negotiation of the Agreement in accordance with the requirements of the Revenue Procedure.

"City" means the Consolidated City of Indianapolis, Marion County, Indiana.

"City-County Council" means the City-County Council of the City.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

"Company" means USFilter Operating Services, Inc.

"Commencement Date" means the closing date of the Asset Purchase Transaction, the commencement of the provision of Services by the Company hereunder and the date upon which the 20-year term of the Agreement begins.

"Company Default" has the meaning ascribed to it in Section 9.01.

"Company Party" and "Company Parties" shall mean the Company, the Guarantor, its agents, representatives and contractors, including, but not limited to, any tier of subcontractor to the Company and any subcontractor to a subcontractor of the Company, and any person (i) directly or indirectly employed by any of them or (ii) for whose acts any of them may be liable.

"Contract Date" means the date this Agreement is executed, which is March 21<sup>st</sup>, 2002.

"CP" means the Capital Plan of the Department as provided by the Company as described in Section 4.09 and Exhibit 8.

"CPI" means the average of the national Consumer Price Index for the applicable 12-month period.

"Default Notice" has the meaning ascribed to it in Section 10.03.

"Department" means the Department of Waterworks, a department of the City of Indianapolis.

"Department Contracts" means the contracts related to the Waterworks that will be assumed by the Company upon the Commencement Date.

"Department Default" has the meaning ascribed to it in Section 9.02.

"Department Party" and "Department Parties" shall mean the City and all departments (including the Department) and divisions thereof, the Bond Bank, and all officials, employees, agents, consultants and representatives of each of the foregoing, and the members of the Board.

"District" means the waterworks district of the Department of Waterworks of the City of Indianapolis.

"Drought" means a 24-month period with an overall rainfall equal to or below the rainfall during the period 1941-1942.

"Equipment" means equipment, including operating and processing equipment tools and rolling stock, owned or leased by the Department and in use as of the Commencement Date, or

procured or provided on or after the Commencement Date by the Company or the Department pursuant to this Agreement for use at or associated with the Waterworks.

"Event of Default" means any one or more of those events described in Section 9.

"Excess Capital Projects" means the number of Capital Projects implemented in any Billing Year that is in excess of the acceptable number of Capital Projects in any Billing Year. The acceptable number of Capital Projects in any Billing Year will be determined by negotiation between the Department and the Company after the presentation by the Company of the CP for the Billing Year.

"Fixed Fee" has the meaning ascribed to it in Section 5.02.

"Field Operations" means operations and maintenance activities related to the Waterworks described in Section 4.05.

"Force Majeure" means any act, event or condition that has a direct material adverse effect on the performance of a subcontractor's or supplier's obligations to the Company if such act, event or condition is beyond the reasonable control of the Company, subcontractor or supplier asserting a Force Majeure as justification for not performing its obligations; provided, however, such act, event or condition cannot be caused by the negligent or intentional action of the Company, subcontractor or supplier.

"Grantor Trust" means the Indianapolis Water Company Grantor Trust Agreement dated May 1, 1995 between the Indianapolis Water Company and Joseph R. Broyles, J.A. Rosenfeld and James P. Lathrop, or their respective successors, as Trustees.

"Guarantee" means the guarantee agreement between the Guarantor and the Department.

"Guarantor" means the Person that executed the Guarantee.

"IDNR" means the Indiana Department of Natural Resources or any successor performing the same function.

"IDEM" means the Indiana Department of Environmental Management or any successor performing the same function.

"IMAGIS" means the Indianapolis Mapping and Geographic Information System/Services.

"Incentive Fee" has the meaning ascribed to it in Section 5.03(a).

"Interim Percentage" has the meaning ascribed to it in Section 5.03(b).

"Inventory" means supplies, chemicals and materials related to the Waterworks.

"IURC" means the Indiana Utility Regulatory Commission or any successor entity performing the same function.

"IWC" means Indianapolis Water Company.

"IWCR" means IWC Resources Corporation.

"Irishman's Run Assets" means the assets of Irishman's Run Acquisition Corp., the company that as of the date of the RFP owns the assets to the Irishman's Run wastewater treatment plant.

"IWC Transferred Employees" means employees transferred from IWC and hired by the Company pursuant to this Agreement and as defined in the Asset Purchase Agreement.

"Key Personnel" means the individuals designated as such by the Department as described in Section 4.02(h).

"Letter of Credit" means the Letter of Credit obtained by the Company pursuant to Section 12.01.

"Letter of Qualification" means the letter of qualification submitted by a respondent to the Department's RFQ.

"Liability" or "Liabilities" has the meaning ascribed to it in Section 6.01.

"Local Providers" has the meaning ascribed to it in Section 13.03(b).

"Local Services" has the meaning ascribed to it in Section 13.03(b).

"MBE" has the meaning ascribed to it in Section 13.03(a).

"MMS" means the computerized maintenance management and reporting program and system described in Section 4.01(a)(18) and Section 4.07(b).

"Maximum Incentive Fee" has the meaning ascribed to it in Section 5.03(a).

"NARUC" means the National Association of Regulatory Utility Commissioners.

"NPDES permit" means those National Pollutant Discharge Elimination System permits issued from time to time by the State of Indiana in respect of the operation and maintenance of the Waterworks.

"Operations and Maintenance Manuals" means (a) the Collection and Distribution System Operations and Maintenance Manual and (b) Equipment, Supplier or Vendor Operations and Maintenance Manuals.

"Operations and Maintenance Projects" are projects that are not Capital Projects.

"Outstanding Company Common Stock" has the meaning ascribed to it in Section 10.06(a).

"Outstanding Company Voting Securities" has the meaning ascribed to it in Section 10.06(a).

"Party" or "Parties" means the parties to this Agreement.

"Person(s)" means any natural or artificial entity including an individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or government, agency or authority (including federal, state, county, municipal or other local agency) or political subdivision thereof.

"Pre-Closing On-Site Conditions" shall have the meaning ascribed to it in Section 2.3(a)(iv) of the Asset Purchase Agreement.

"Pre-Closing Product Liabilities" shall have the meaning ascribed to it in Section 2.3(a)(vi) of the Asset Purchase Agreement.

"Proposal" means the response to the RFP submitted by the Company to the Department on or before February 8, 2002.

"Prudent Utility Practice" means any of the practices, methods, and acts engaged in or approved by a significant portion of the water utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a range of acceptable practices, methods or acts generally accepted in the region.

"QA/QC" means effective quality assurance and quality control.

"R&D Program" means the program described in Section 4.01(a)(27).

"Retiree Medical Benefits" means retiree health insurance, life insurance, and Medicare Part B premium reimbursement.

"Revised Proposal" means the revised Proposal submitted by the Company to the Department on February 21, 2002.

"RFP" means the Request for Proposals issued by the Department on December 21, 2001.

"RFQ" means the Request for Qualifications issued by the Department on December 4, 2001.

"Revenue Procedure" has the meaning ascribed to it in Section 5.01(b).

"Service Fee" means the fee comprising the Fixed Fee and the Incentive Fee.

"Services" means the operation, maintenance, repair and management services provided by Company Parties pursuant to this Agreement, including, without limitation, raw water supply, treatment and distribution, billing collection and other customer services, as well as the provision of certain capital planning, designing, project management or contribution in aid of construction assistance.

"State" means the State of Indiana and all of its relevant administrative, contracting and regulatory agencies and offices.

"Uncontrollable Circumstance(s)" means any act, event or condition that (a) prevents the Company or the Department from meeting or (b) materially increases the cost of performing, its obligations under this Agreement, if such act, event or condition is beyond the reasonable control of the Party asserting an Uncontrollable Circumstance as justification for not meeting or performing such obligations; provided, however, with respect to the Company's obligations, such act, event or condition is not the result of the Company's failure to operate and maintain the Waterworks in accordance with the terms and conditions of this Agreement.

(a) Subject to the immediately preceding paragraph of this definition, the following acts, events or conditions may qualify as an Uncontrollable Circumstance:

(1) flood, Drought, hurricane, tornado, epidemic, severe earthquake, catastrophic fire or explosion, act of a public enemy, war, blockade, insurrection, riot, general unrest, restraint of government and people, civil disturbance, sabotage or similar occurrence;

(2) the order, injunction or judgment of any federal, State or local court, administrative agency or governmental body or officer with jurisdiction over the Department or of the Department acting in its governmental capacity, including any exercise of the power of eminent domain, police power, condemnation or other taking by or on behalf of any public, quasi-public or private entity; provided, however, that such order, injunction or judgment did not arise in connection with or is not related to the negligent or wrongful action or inaction of the Party relying thereon and that neither the contesting in good faith of any such order, injunction,

or judgment nor the reasonable failure to so contest shall constitute or be construed as a wrongful or negligent action or inaction of such Party;

(3) the suspension, termination, interruption, denial, failure to issue, modification or failure of renewal of any permit, license, consent, authorization or approval necessary to the operation, maintenance, repair and management of the Waterworks, if such act or event did not arise in connection with, or is not related to, the negligent or willful action or inaction of the Party asserting an Uncontrollable Circumstance; provided, however, that neither the contesting in good faith of any such order nor the reasonable failure to so contest shall be construed as a negligent or willful action or inaction of such Party;

(4) a Change in Law;

(5) the loss or inability to obtain any and all utility services, including sludge disposal and electric power, necessary for the operation, maintenance, repair and management of the Waterworks directly resulting in a partial or total curtailment of operations at the Waterworks for reasons other than the negligent, willful or wrongful action or inaction of the Company;

(6) the failure of any subcontractor or supplier, other than an Affiliate, to furnish services, materials, chemicals or Equipment on the dates agreed to; provided (A) such failure is the result of a Force Majeure, (B) such failure materially and adversely affects the Company's ability to perform its obligations and (C) the Company is not reasonably able to obtain substitute services, material, chemicals or Equipment on the agreed upon dates; and

(7) unavailability of Acceptable Raw Water.

(b) An Uncontrollable Circumstance shall not include:

(1) any act, event or condition which is caused by the negligence or intentional action of the Party asserting the Uncontrollable Circumstance, its subcontractors, agents and employees;

(2) any event, reasonably foreseeable on the Contract Date;

(3) economic infeasibility;

(4) any labor strike, work stoppage or slowdown on the part of the Company's or an Affiliate's employees;

(5) subject to the definition of a Change in Law regarding sales taxes, any order, injunction or judgment of any federal, State or local court, administrative agency or governmental body interpreting federal, State, or local tax laws; and



(6) weather conditions in the geographic area of the Department, other than those listed in (a)(1) of this definition.

"USEPA" means the United States Environmental Protection Agency and any successor performing the same function.

"utility" or "utilities" means gas, electric, water, wastewater, telephone, storm-water user fees and any other utilities.

"Waterworks" means the water collection, purification and distribution system described in Exhibit 3.

### **SECTION 3**

#### **CONDITIONS PRECEDENT TO THE DEPARTMENT'S/COMPANY'S OBLIGATIONS**

##### **Section 3.01 Conditions Precedent.**

All rights, obligations and liabilities of the Department and the Company hereunder shall be subject to the satisfaction of the following conditions precedent:

- (a) the Asset Purchase Transaction shall have closed;
- (b) the Department and the Company shall have consulted and defined their respective roles in all matters of labor relations;
- (c) the Guarantor shall have executed the Guarantee described in Section 12 and in substantially the form attached hereto as Exhibit 10 and the Company shall have provided the Letter of Credit described in Section 12 and in substantially the form attached hereto as Exhibit 11;
- (d) the Company shall have delivered to the Department (1) a certificate of an authorized officer of the Company, dated as of the Commencement Date, to the effect that each of the representations of the Company set forth in Section 11.02 of this Agreement is true and correct in all material respects as if made on such date and (2) an opinion of counsel to the Company, in customary form and reasonably acceptable to the Department, to the effect set forth in Sections 11.02(a), (b), (d) and (e);
- (e) the Department shall have delivered to the Company (1) a certificate of the President or the Chairperson of the Board of Directors of the Department, dated as of the Commencement Date, to the effect that each of the representations of the Department set forth in Section 11.01 of this Agreement is true and correct in all material respects as if made on such date;

(f) the Department shall have received an independent broker's letter which certifies that all policies of insurance required to be obtained by the Company pursuant to this Agreement have been obtained;

(g) no action, suit, proceeding or official investigation shall have been overtly threatened or publicly announced or commenced by any Person, other than the Department, in any federal, State or local court that (i) seeks to enjoin, assess civil or criminal penalties against, assess civil damages against or obtain any judgment, order or consent decree with respect to the Department or the Company as a result of the Department's or the Company's negotiation, execution, delivery or performance of this Agreement, or (ii) may, in the reasonable opinion of the Department, materially impair the Company's ability to satisfactorily perform its obligations hereunder;

(h) no change shall have occurred after the Contract Date and on or before the Commencement Date in any Applicable Law that would make the execution or delivery by the Department or the Company of this Agreement or that would make compliance by the Department or the Company with the terms and conditions of this Agreement, a violation of Applicable Law;

(i) all of the documents, approvals or authorizations listed in this Section 3.01(a)-(k) shall be in full force and effect on the Commencement Date;

(j) the Department shall have obtained financing for the acquisition of the Waterworks using a combination of investment grade tax-exempt or taxable municipal bonds or other securities on terms that are reasonably satisfactory to the Department; and

(k) the City-County Council shall have approved the award of the Management Agreement to the Company.

#### Section 3.02 Satisfaction of Department Conditions.

The Department shall exercise good faith and due diligence in satisfying the conditions precedent identified in Section 3.01 and shall give the Company written notice within five (5) days after the last of such conditions precedent have been satisfied or waived. If such conditions are not so satisfied or waived on or before one hundred eighty (180) days after the Contract Date, then either Party, by written notice to the other, may terminate this Agreement. If either Party shall give such termination notice to the other, neither Party shall be liable to the other for the termination of this Agreement, and each Party shall bear its respective costs and expenses attributable to the transaction herein contemplated.

## **SECTION 4 OPERATIONS AND MAINTENANCE**

### **Section 4.01 Overall Responsibilities.**

(a) Company. On and after the Commencement Date and through the term of this Agreement, at its cost and expense, except as otherwise expressly stated, the Company shall:

(1) provide uninterrupted, safe, timely professional and reliable management of the Waterworks in a cost effective and business like manner and in accordance with this Agreement, including, without limitation, Exhibits 1 and 2 and Prudent Utility Practice. If the Company meets the Operations and Maintenance Standards set forth in Exhibit 12, the Incentive Fee shall be adjusted as described in Section 5.03.

(2) provide reporting, plans, policies, procedures, qualified supervision, labor, tools, vehicles, Equipment, materials and personnel necessary to perform the general operations and maintenance Services outlined in this Section 4.01(a) at least up to the standards of operation and maintenance applied to the Waterworks during the five (5) years immediately preceding the Contract Date and in accordance with Prudent Utility Practice, Section 4.02 and Exhibits 1, 2 and 8, including, without limitation, those necessary to:

(A) manage and operate all water treatment facilities, pumping, and distribution systems that comprise the Waterworks, in accordance with all Applicable Laws, including, but not limited to: facilities management and support; computer-based management, process control and maintenance management systems; quality assurance systems; laboratory analysis; QA/QC; security of sites, facilities, and Equipment; residuals management; and building and grounds up-keep and maintenance;

(B) meet or exceed all applicable standards, requirements, and guidance documents, including, but not limited to, the following:

(i) The Public Health Service Act, 42 U.S.C. §§ 300f to 300j-26 (regarding the Safety of Public Water Systems, also known as the Federal Safe Drinking Water Act) and federal or state rules or regulations promulgated thereunder;

(ii) Indiana's Public Water Supply Act at Indiana Code § 13-18-16, and the Indiana Water Pollution Control Board's regulations regarding Public Water Supply at 327 IAC 8;

(iii) any service quality standards established by the IURC;

(iv) design criteria and performance specifications and warranty maintenance requirements for the various components and Equipment throughout the Waterworks;

- (v) asset maintenance performance standards; and
- (vi) current and future laboratory and Company (treatment and distribution) certifications.

The Company will assume all responsibility for payment of any fines and other action imposed by the IURC, IDEM, IDNR or any other governmental body or agency resulting from (i) faulty and negligent operation, (ii) operation not in conformance with this Agreement, or (iii) operation not in compliance with Applicable Law, provided, however, that the Company will not assume responsibility for fines and other actions imposed by the IURC, IDEM, IDNR or any other governmental body or agency resulting from failure to comply with Applicable Law that is caused by the Department's refusal to implement Capital Projects that are timely recommended by the Company and required to comply with Applicable Law.

(C) to assure their efficient long-term reliability and preservation, maintain, repair and operate all structures and facilities, Equipment, materials and grounds, including but not limited to, the following:

- (i) water intake facilities, water production complexes, pumping stations, buildings, distribution systems, wells, plants, meters, reservoirs, aqueducts, storage tanks, mains, shops, garages and offices;
- (ii) equipment, including vehicles, rolling stock, mechanical, electrical, HVAC, process control instrumentation, communications, and computer systems;
- (iii) materials, such as chemicals, utilities, spare parts, other consumables and non-consumables, such as personal computers, instruments, furniture and tools; and
- (iv) grounds up-keep for all buildings and facilities, including mowing, fertilizing, pruning, removing weeds, landscaping, lighting, interior and exterior painting, on-site road upkeep, and custodial activities.

Operation and maintenance shall be accomplished in accordance with manufacturers' specifications and recommendations, manuals and Prudent Utility Practice. The Company shall employ predictive, preventive, periodic and corrective operations and maintenance programs, shall enforce existing equipment warranties, and shall maintain all warranties on equipment placed in service after the Commencement Date.

(D) manage and operate all meter reading functions, including, without limitation: meter installation and service connections, meter management, meter reading, meter repair and replacement, checking for open bypasses and quality assurance systems.

(E) manage and operate all water utility billing and collection functions. It will be required that such system interface as needed with the City's and the Department's other computer and billing systems.

(F) regularly assess performance and implement operational changes and adjustments in routine operating procedures as necessary and appropriate to maintain and improve the efficiency and quality of the Waterworks and the Services.

(G) conduct Field Operations and dispose of residual sludges at least in compliance with the more stringent or comprehensive of (1) all Applicable Laws or (2) the standards, procedures or guarantees set forth in this Agreement; provided, however, the Company shall be relieved from meeting such requirements to the extent (1)(A) the Company exercises all reasonable efforts, within the confines of the then current treatment and operational capability of the Waterworks, to meet such requirements and (B) a necessary Capital Project, not due to Company fault pursuant to Section 4.11(b), must be procured, installed and operational to provide the Company with such capability, or (2) (A) an Uncontrollable Circumstance, inclusive of an emergency if it otherwise qualifies as an Uncontrollable Circumstance occurs, preventing the Company from meeting such requirements and (B) the Company complies with its obligations specified in Section 4.11(a).

(H) at all times make all reasonable efforts to implement and maximize the ability of the Waterworks to reduce effluent pollution discharges.

(I) operate the Waterworks in such a manner so as to reduce, to the maximum extent reasonably possible, energy use, demand and transportation payments relative to the Waterworks, in accordance with all Applicable Laws.

(3) relative to the Company's operation, maintenance, repair and management obligations, the Company shall provide:

(A) all planning, design and project management; and

(B) implement operational improvements that maximize the economy of the Department's operations in accordance with this Agreement and Applicable Laws.

(4) provide support to the Department in connection with its long- and short-term planning and implementation of Capital Projects. The Company shall provide the following services:

(A) planning and project management,

(B) inspect existing Waterworks facilities;

(C) prepare for review, a Capital Project program;

(D) make available to the Department members of the Company's QA/QC team and technical support group;

(E) suggest, where applicable, solutions that may avoid the need for Capital Projects;

(F) implement operational improvements that maximize the economy of the Department's operations in conformance with Applicable Law and this Agreement; and

(G) processing of water main extension contracts and the performance of related activities required for new developments, including engineering design reviews, field inspection of developer-installed water mains, and processing of main extension refunds required under current rules.

(5) maintain, generate, file and provide to the appropriate entity in a timely manner, with approval from the Department, provided such approval does not delay or obstruct the timely filing of such reports by the Company, all information, notices, reports and records, including, but not limited to, monitoring and sampling results, annual reports or other requests for information in accordance with Exhibit 2, attached hereto, as may be required of the Company or the Department (A) pursuant to Applicable Laws, including as required to maintain compliance of the Grantor Trust with Applicable Laws, (B) by any court having appropriate jurisdiction, and (C) by this Agreement, including, without limitation, as necessary to support the rate setting function of the Department and the negotiation of intergovernmental, wholesale and water services agreements, as expeditiously as possible after the requisite information is made or could be made available to the Company, but in no event later than the applicable date specified in this Agreement or that which may be reasonably required by the Department or entity under the circumstances to make appropriate filings or to give appropriate notices in a timely manner; and provide to the Department a copy of each annual written account of the administration of the Grantor Trust prepared by the trustees pursuant to Section 9 of the Grantor Trust.

(6) evaluate proposed, pending or final regulatory changes from an operational standpoint to determine their effect on the Waterworks' operations, policies, and procedures. Based on operational experience and the Department's service objectives, the Company will identify for the Department's consideration any and all recommended changes in policies, regulations or guidelines that may improve the quality or cost-effectiveness of Waterworks and/or Services and will provide information and analyses to support Department efforts to establish or assess the appropriateness of operating regulations, policies or rates.

Immediately, but in no event later than four (4) hours or within the period, if any, prescribed by Applicable Law, whichever is earlier, notify and provide the Department with any and all information as the same becomes available relative to any activity, problem, event or circumstance that threatens or may threaten the public health, safety or welfare of the residents

within the District. The Department reserves the right to establish notification protocol, with which the Company shall comply.

(7) obtain, maintain and meet all applicable federal, state and local certifications, regulatory, licenses and permit requirements and any subsequent modifications including, but not limited to, requirements contained in the following:

- (A) Water Withdrawal Permit(s) approvals or agreements;
- (B) Permits required by the Clean Water Act, 33 U.S.C. §§ 1251-1387 or Indiana Code § 13-18, including NPDES permits, Storm Water permits or dredge and fill permits;
- (C) Permits required by the Clean Air Act, 42 U.S.C. §§ 7401 to 7671q and Indiana Code § 13-17, including Title V construction and operations permits, Federally Enforceable State Operating Permits ("FESOPs") or enforceable operating agreements;
- (D) Construction permits issued under IDEM's Drinking Water Permit Program or the Federal Safe Drinking Water Act;
- (E) Railroad, Transportation and Other Permit(s);
- (F) Permits required by state or federal solid hazardous waste or toxic substance, statute, rule or regulation;
- (G) Permits, licenses or certifications required by the Federal Safe Drinking Water Act, Indiana's Public Water Supply Act or the Indiana Water Pollution Control Board regulation of the Public Water Supply;
- (H) Laboratory and Company Certification(s); and
- (I) any consent decree or other settlement arrangement reached with IDEM or the Indiana Office of Environmental Adjudication.

Whether the Department holds the permits in its name, or any permit is held jointly by the Parties, subject to the provisions of Section 4.01(a)(2)(B), the Company will be responsible for securing, at its own expense, such permits, licenses or certifications, meeting applicable regulatory requirements, and paying any fines, penalties, or judgments resulting from the failure of the operation to conform with Applicable Laws or permits or licenses. Company shall pay all public utility, permit, license and certification fees relative to the Waterworks and all fees and costs with respect to Company's obligations, including obtaining all necessary or appropriate authorizations or approvals to perform such obligations under this Agreement. No such fines, penalties or judgments will be treated as pass-through items for purposes of the Service Fee to be paid to the Company pursuant to this Agreement. Company shall sign as

Company, all information, notices and reports generated, filed, stored or provided pursuant to Section 4.01(a).

(8) provide assistance to the Department in responding to requests for information from external auditors, the Department's internal auditors, and others, including but not limited to:

- (A) State and federal grant audits and information requests;
- (B) State and local government audits;
- (C) Independent audits by CPA firms;
- (D) Permit compliance reports;
- (E) Information requests from users or groups of users of the Waterworks;
- (F) Information requests from communities or groups of communities that are provided water service by the Department;
- (G) Information required to prepare the Department's annual financial audit and management representation letter; and
- (H) Indiana Open Records Act requests for information.

The Company will be responsible for developing and submitting all permit compliance reports and related documentation required by permitting agencies. In the course of conducting this work, the Company may require support from the Department in interpreting, explaining or conducting research or investigations related to the results of sampling/monitoring programs.

(9) provide all services relating to billing, collections and customer service for the Waterworks, consistent with current practice, including, without limitation:

- (A) preparation of customer bills;
- (B) mailing of bills;
- (C) generating and delivering past due bills;
- (D) receipt of revenues and/or deposits;
- (E) debt collection;



- (F) responding to customer inquiries;
- (G) correction of billing errors;
- (H) disbursement or application of deposits;
- (I) informing customers of their rights and responsibilities;
- (J) adding and deleting accounts;
- (K) processing customer work orders and requests, including all backlogged work orders transferred on the Commencement Date;
- (L) reading meters;
- (M) conducting field services, including field visits for inspections, turn-on and turn-offs, and system checks;
- (N) emergency field visits;
- (O) tap scheduling;
- (P) meter testing and repair;
- (Q) record keeping;
- (R) database maintenance; and
- (S) all other services which may be or become necessary for the operation of the Waterworks related to billings, collections and customer service.

The Company shall comply with all Applicable Laws, regulations and Prudent Utility Practice concerning billing, collections and customer service, including, without limitation, those contained in 170 IAC 6. Such customer service must be in a manner that is consistent with Exhibit 1 and that meets or exceeds the levels of customer service provided by IWC. The Department reserves the right to require the Company to include inserts containing customer service announcements and other information in the mailings prepared by the Company at no charge to the Department.

(10) be responsive to customer needs and concerns in both standard and unusual operating situations. The Company shall provide a one-call customer service center to answer all customer inquiries, with 24-hour per day emergency service call handling capability

and at least one walk-in customer service center during weekday business hours in a location approved by the Department.

(11) provide customer service hours on a 24-hour a day, 7 days per week basis in compliance with the Customer Service Plan described on Exhibit 8, the Performance Guarantees set forth on Exhibit 1, and in a manner that:

(A) is at least in compliance with all City, local, state, and federal environmental, safety and other rules, regulations, guidelines, mandates, and laws;

(B) is consistent with the goals and objectives of the Department regarding the Waterworks;

(C) preserves the existing capital investment and ensures long-term reliability and efficiency of the Waterworks;

(D) is at a minimum in accordance with Prudent Utility Practice; and, where applicable, equipment manufacturers' specifications and recommendations;

(E) retains and improves existing levels of reliability;

(F) maintains the security of the Waterworks; and

(G) allows for 24-hour payment of water bills.

(12) provide, utilize and maintain an automated customer billing, collection and information system and will provide the Department with unrestricted reading access to the customer information service system and supporting data. The Company shall maintain records for customer complaints, service requests, water consumption and account status for a minimum period of four years. Three access points or workstations shall be set up in Department's offices to provide access to the Waterworks data. Should the Company upgrade the records system during the term of the Agreement, the Department workstations shall also be upgraded within 48 hours of the time the upgraded systems are placed in service by the Company.

(13) maintain professional, responsible and responsive working relationships with the staff of the Department, the City, local, state and federal regulatory authorities, suppliers of materials, utilities and services, the media and the public. The Company shall keep the Department informed at all times of the status of any and all inquiries, requests or complaints received by the Company.

(14) maintain and support relationships with other City departments (including the Department of Public Utilities), agencies, and neighboring jurisdictions as summarized in Exhibit 3 and advisory committees as approved by the Department. Coordination meetings with key organizations and organizations outside of the City (e.g., Indiana Department of

Transportation) are anticipated approximately once per week. Throughout the term of this Agreement, the Company shall commit appropriately qualified staff to maintain these arrangements.

It is recognized that the City is in the process of implementing practices and infrastructure to improve and promote the improvement of water quality as well as maintain and/or implement other initiatives. The Company shall cooperate fully with the Department and the other City agencies in regards to requests to accommodate these issues.

(15) audit contract compliance in accordance with Exhibits 1 and 8.

(16) be responsible for (a) daily analyses performed for the purpose of process control and system operations and maintenance, and (b) the performance of all sampling, monitoring and laboratory analyses required to determine operating compliance with federal and state requirements. The Department may at any time request additional sampling, monitoring or independent analyses to verify performance and shall bear all cost of such additional sampling, monitoring or independent analyses. The Company shall provide for QA/QC testing in conjunction with laboratory work. QA/QC methods shall include blanks, duplicates, spikes, percent recovery, method detection limit studies, or other methods and a description of the QA/QC program and supporting analytical results shall be maintained in orderly files by the Company's laboratory and shall be summarized in an annual report and otherwise made available upon request by the Department. The number of QA/QC samples shall be consistent with state of the art industry practice.

(17) maintain safety records in connection with its management of the Waterworks. The Company must record the relevant details regarding any accidents or injuries occurring on the property of the Waterworks. The Company shall prepare a monthly report for the Department detailing its safety record from the time of the last report.

(18) define to the Department's satisfaction the specific methods and resources that will be used to implement a state-of-the-art and fully functional computerized maintenance management and reporting program and system ("MMS") for the Waterworks. The identified system must provide, but not be limited to:

(A) implementation and support for a state-of-the-art predictive, preventive and corrective maintenance program;

(B) data at the level of detail and in a format that will integrate electronically with the Department's accounting system for fixed asset accounting, management, and for user-charge development and with the ability to maintain the Waterworks records of accounts in accordance with NARUC's guidelines for Class A Water Utilities (as currently promulgated or revised in the future). The purpose of this requirement is to maintain the detailed accounting information that would be required to justify and document the need for future rate

changes, as well as to allow the Department or its advisors to determine rate proportionality by customer class through the completion of a cost of service study;

- (C) identification of potential maintenance problem areas;
  - (D) adequate information to support facility and operational planning;
- and
- (E) status reports for management and compliance monitoring.

Upon Department approval, the Company will implement the MMS and maintain it during the term of the Agreement.

(19) create, maintain and update written maintenance and operating procedures and plans, including, but not limited to the reports and plans described on Exhibit 8 as follows:

- (A) Operations and Maintenance (O & M) Plan
- (B) Field Operations Plan
- (C) Safety Plan
- (D) Performance and Contract Compliance Plan
- (E) Long- and Short-Term Planning
- (F) Customer Service Plan
- (G) Redundancy and Back-up Power Plan
- (H) Regulatory Compliance Plan
- (I) Aesthetic Water Issues Plan
- (J) Capital Projects Plan (including possible Company investments)
- (K) Water Main Break Management Plan
- (L) Water Yield Study
- (M) Emergency Plan
- (N) MBE/WBE Plan

It is recognized that many components of each of these plans overlap aspects of other plans and that data gathered for many of these plans may benefit or be the basis for information in more than one plan. The Company may approach the Department and request that some of these plans be combined in order to increase the efficiencies of the plan preparation and submittal process. The Department will consider requests of this nature on a case-by-case basis.

(20) work with the Department in performing inventories and audits prior to, during and at the termination of the Agreement to address all aspects of the physical inventory of administrative equipment, treatment equipment, parts and supplies and as necessary to implement the terms of the Agreement concerning such matters.

(21) provide quarterly unaudited financial statements of the Guarantor and of the Company's operations and maintenance under this Agreement to the Department no later than forty-five (45) days after the end of each Billing Quarter and provide annual audited financial statements of the Guarantor and the Company's operations and maintenance under this Agreement to the Department no later than ninety (90) days after the end of each calendar year with respect to the Company and no later than one hundred twenty (120) days with respect to the Guarantor and shall allow the Department to review and analyze such operations and maintenance at any time.

(22) operate and maintain the radio system in compliance with federal, State and local requirements.

(23) maintain laboratories for which the Company is responsible.

(24) provide the Department with unlimited access to the Waterworks on a twenty-four (24) hours per day basis, including providing all necessary safety equipment and safe access for those areas to be inspected, toured and evaluated.

(25) be assigned, unless the Parties otherwise mutually agree, and thereafter be solely responsible for, all IWC contracts relating, directly or indirectly, to the Waterworks and administer and make all payments with respect to such contracts ("Department Contracts"). In cases where such contracts terminate and are not renewed, the Company shall be responsible for providing the services, materials, supplies, fuel, chemicals, utility services or facilities provided therein at its cost and expense. All contracts and union agreements with respect to the Waterworks and entered into by the Company subsequent to the Commencement Date shall be assignable to the Department; provided, however, that to the extent that before its acquisition of the Waterworks, the City had contracts with any of the utilities whose assets make up the Waterworks relating to elevation of water levels or withdrawal standards from wells, all as reflected on Exhibit 1, the Company shall abide by and adhere to such standards.

(26) provide reasonably sufficient and suitable office space for the Department's compliance personnel, including computer terminals and office furnishings necessary to perform their duties.

(27) make certain investments and provide certain commitments set forth in the Proposal, as follows:

(A) fulfill local commitments such as MBE and WBE participation, community involvement, local participation and research and development as more particularly set forth below and in Exhibit 12;

(B) establish a long-term research and development ("R&D") relationship among the Department, the Company, Vivendi Water, S.A., and Indiana University-Purdue University Indianapolis ("IUPUI") to create the Indianapolis Water Quality Project (the "Project") as an international center of excellence on selected water quality issues. The Company will contribute \$250,000 per year to the Project through IUPUI and provide in-kind services and equipment, grant proposal assistance, access to international R&D expertise, and pursuit of matching funds from local sponsors, all subject to negotiation with IUPUI;

(C) contribute per year an average of at least \$363,721 toward a variety of civic and charitable activities in the Indianapolis area (such average annual amount during the first five years of this Agreement shall be at least \$423,842);

(D) provide that its Operations Manager and Key Personnel will be actively involved in significant civic and charitable activities in the Indianapolis area and encourage other Company employees working at the Waterworks to contribute to and be involved in such activities;

(E) identify specific groups and organizations which will receive support from the Company;

(F) identify new and innovative projects the Company may consider in the Indianapolis area;

(G) develop and implement improvements to the SCADA distribution automation system, power optimization, software conversion, computer replacements, sulfuric acid feed system, lab equipment and replacements, and relocation of the central control system estimated to be \$1,158,625 and installed by December 31, 2003;

(H) develop and implement gravity belt thickeners, temporary sludge disposal, and tanker truck to reduce operating cost by eliminating the amount of alum sludge going to the waste-water plant and the wear and tear on the plant's incinerators, to the extent provided in Section 4.01(a)(27)(I);

(I) design, build and operate the Solids Dewatering Technology at the White River Treatment plant which will consolidate solids disposal for the White River, Fall Creek, and T.W. Moses water treatment plants and capture over 95% of total suspended solids from the backfilter wash water residuals and settlings basins generated at the Fall Creek, T.W. Moses, and White River plants; the aggregate cost of (H) and (I) is estimated to be (i) \$5,025,874 and (ii) implemented by December 31, 2002;

(J) undertake and complete a study within the first year following the Commencement Date that evaluates the major sources of nutrients such as phosphorus input into the reservoirs, including phosphorus availability from sediments in the reservoirs and watershed approaches to minimize such phosphorus inputs;

(K) relocate and maintain its Midwest Regional Engineering and Construction Service Center in the Indianapolis area;

(L) implement an ISO9001:2000 and ISO14001 program with independent third party verification no later than May 1, 2004 in order to continuously measure and improve its operations and maintenance activities in connection with the Company's operation of the Waterworks;

(M) invest at least \$17,000,000 over the twenty (20) year term of this Agreement designed to remedy taste and odor issues associated with the finished water produced by the Waterworks, including watershed management (e.g. chemical treatment of the reservoirs and analysis and education to reduce agricultural impacts), capital improvements (e.g. development of groundwater resources, ozonation, carbon treatment and biofiltration) and research and development directly related to the Waterworks;

(N) encourage its affiliated company USFOS Water Services to expand its regeneration and high purity water facility in the Northwest Indianapolis area with a \$1,000,000 capital project that will increase the employment at such facility by 50% (from 32 to 48 employees);

(O) preserve the items described below for reasonable disposition by the Department and in no case allow transfer of these items to a third party or their destruction for a minimum of two years. These items may have historical significance and may not be needed by the Company to discharge duties under this Agreement. These assets include the following general descriptions: annual reports; glass plate negatives; canal history; miscellaneous original films, photographs, promotional items and artwork; papers dating from the 1880's; news clippings organized in books segregated by year; and other memorabilia including a wooden bodied hand pump.

Notwithstanding the foregoing, if the investments or commitments contained in the Response are inconsistent with, or less stringent than, the requirements of this Agreement or

the Exhibits attached thereto, then the applicable provisions of this Agreement or the attached Exhibits shall control.

(28) map and track all main breaks, regardless of cause, in order to monitor the overall integrity of the Waterworks and possible problem areas in accordance with Exhibit 8.

(29) maintain all reports and records in accordance with all Applicable Laws, Prudent Utility Practice and all City, State and Department record retention policies.

(30) for so long as the City owns the Irishman's Run Assets, provide such wastewater treatment services on a turnkey basis as are currently being provided.

(31) not transfer, dispose of, or abandon any asset related to or used in the operation of the Waterworks without the consent of the Board.

(32) perform all administrative services related to Retiree Medical Benefits.

(b) Department. On and after the Commencement Date and during the term of this Agreement, the Department shall:

(1) pay, or cause to be paid, the Service Fee to the Company in accordance with the terms and conditions of this Agreement for the Company's performance of its obligations under this Agreement;

(2) through the Board, retain broad oversight and responsibility of developing and maintaining policy guidance for the Waterworks and remain the point of contact for policy pronouncements and related media contact;

(3) approve the CP, procure, provide and implement, or cause to be procured, provided and implemented, such Capital Projects relative to the Waterworks, as the Department, in its sole discretion, deems necessary or appropriate; provided, however, the Parties agree and acknowledge that the CP will be implemented pursuant to the Additional Services provisions set forth in Section 4.09.

(4) prepare and submit rate applications for approval of the IURC unless prohibited by law;

(5) conduct negotiations, provide legal support for and approve all intergovernmental, wholesale water and water services agreements;

(6) retain, subject to the approval of the City-County Council, all authority to provide for the issuance of indebtedness payable from or secured by the revenues of the Waterworks or secured by the Waterworks;



- (7) perform compliance auditing;
- (8) provide for Company access to, and use of, the Waterworks;
- (9) with the cooperation and assistance of the Company, maintain and keep in force all warranties, easements, licenses and permits, including licenses for vehicles and other applicable rolling stock for which licenses are required;
- (10) (i) pay all taxes assessed and due with respect to public utility property that is subject to taxation under Indiana Code 6-1.1-8, owned by the Department and used by the Company for the sale or distribution of water (including taxes assessed with respect to such property prior to its acquisition by the Department) whether hereafter assessed in the name of the Company or the Department, (ii) in cooperation with the Company, file or approve the filing of, any statements of value and descriptions of property required to be filed, (iii) contest or appeal any such property tax assessment in any proceeding authorized by law, and (iv) retain the right to assert any exemption from such taxation, and make any payments in lieu of taxes in such amounts as may be determined and approved by the Board; provided, however, that should the Company be required to pay the taxes or payments in lieu of taxes set forth in this paragraph (10) and the Department does not pay such taxes, the Department shall promptly reimburse the Company the full amount paid by the Company;
- (11) make available to the Company, Equipment warranty information, engineering drawings, calculations, maintenance manuals, operational records, logs, reports, submittals, repair records, audits, and sludge disposal information which may be in the Department's possession, relating to the design, condition, operation or maintenance of the Waterworks;
- (12) make available for use and consumption by the Company, all Equipment and Inventory as of the Commencement Date;
- (13) retain the right to determine whether to exercise the power of eminent domain and to direct and control, in cooperation with the Company, the initiation and conduct of any condemnation proceedings; and
- (14) assist Company with purchasing of tangible personal property to be used in the operation, maintenance, and capital improvements to the Waterworks, to the extent permitted by Applicable Law.
- (15) The Department shall be responsible for the total accrued liability associated with the Retiree Medical Benefits for the time period through December 31, 2004, based upon actuarial valuations conducted from time to time by the Company's actuaries. The initial actuarial valuation shall be completed by the Company's actuaries, at the Company's expense, no later than April 5, 2002.

(c) Restrictions. The Company shall not, without the prior written consent of the Board and subject to the Bond Documents: (i) change the nature of the business of the Waterworks as currently conducted, (ii) change the accounting methods or practices with respect to the Waterworks, (iii) enter into any contract, commitment or transaction not in the usual and ordinary course of the business of the Waterworks, (iv) utilize the assets of the Waterworks for any purpose other than the continued operation of the Waterworks, (v) distribute any of the assets of the Waterworks to the Company or any other person or entity, or (vi) dispose of, transfer, convey, pledge, mortgage, encumber or otherwise subject to any lien or security interest any of the assets of the Waterworks.

#### Section 4.02 Personnel.

(a) As of the Commencement Date, the Company shall recognize all certified unions representing Department or IWC employees who are performing work subject to this Agreement ("Bargaining Unit Employees") and agrees to assume the current collective bargaining agreements and to honor any collective bargaining agreement that may be negotiated with respect to IWC Transferred Employees ("CBA") (with respect to Bargaining Unit Employees) for the term of such agreements. During the term of this Agreement, the Company must (i) maintain a competent work force at a skill level sufficient to meet all operational and maintenance needs in a timely and efficient manner, (ii) ensure the continued and uninterrupted operation of the system on a twenty-four (24) hour per day, seven (7) day per week basis, and (iii) comply with all Applicable Laws in the performance of its responsibilities under this Agreement.

(b) As of the Commencement Date, the Company shall offer employment to IWC employees listed on Schedule 5.9(a) of the Asset Purchase Agreement provided at Closing and employed as of the Commencement Date. Such offer to each non-Bargaining Unit Employee shall include (1) position and wages or salary substantially comparable to such employee's position and wages or salary at IWC at the time such employee's employment with IWC ended, and (2) except as otherwise provided herein, the same retirement and welfare benefits that are offered to similarly situated employees of the Company. The Company shall assume sponsorship of, and all rights and obligations of IWC under, the following plans of IWC, and may at its own expense, and except as otherwise provided herein, amend or terminate such plans or merge them into its own retirement plans or provide a comparable benefit program, to the extent permitted by the CBA, as amended from time to time: (1) IWC Resources Corporation Employees' Pension Plan (the "Pension Plan"), (2) IWC Resources Corporation Executive Supplemental Benefit Plan, (3) IWC Resources Corporation Deferred Compensation Plan, (4) IWC Resources Corporation Employee Thrift Plan, (5) IWC Bargaining Unit 401(k) Plan, (6) IWC Resources Corporation Employee Stock Ownership Plan (the "ESOP"), (7) Group Life, Health, Dental and Disability Plan of IWC Resources Corporation ; and (8) Medicare Supplemental Health Insurance Plan. The foregoing assumption of plan sponsorship shall be completed pursuant to the Plan Sponsorship Agreement attached hereto as Exhibit 15 and shall be conditioned upon IWC's execution thereof. As of the Commencement Date, each Transferred Employee shall be given credit for the Transferred Employee's service with IWC for purposes of

benefit eligibility, accrual and vesting in all Company employee benefit plans and Retiree Benefits. Any co-insurance and deductibles paid by IWC Transferred Employees under the Group Life, Health, Dental and Disability Plan of IWC Resources Corporation or Medicare Supplemental Health Insurance during the year of the Commencement Date shall be counted towards the applicable co-insurance and deductibles under the Company's medical insurance plan for that same year, to the extent permissible. The Company shall waive any pre-existing condition exclusions contained in any Company's plan that would otherwise apply to IWC Transferred Employees and their dependents for conditions existing at the Commencement Date.

(c) Employees hired by the Company to provide Services shall be employees of the Company and not the City or the Department, and except as provided otherwise herein for Retiree Benefits, the Company shall be solely liable for the payment of all wages and provision of all other benefits to such employees in connection with their employment. The Company shall provide all management, supervisors, safety and training personnel, and other personnel necessary to responsibly provide the Services.

(d) To the extent permitted by law, prior to employing any person, the Company must request and obtain from such person detailed information concerning such person's qualifications and ability to perform the position for which such person is applying. The Company's employee records are to be subject to the Department's inspection at any time during the duration of this Agreement, to the extent permitted by law.

(e) The Company shall provide newly hired employees with an orientation and shall conduct interviews, career planning sessions, employee performance and needs assessments and initial ninety (90)-day performance reviews. IWC Transferred Employees shall become participants in the Company's medical plans applicable to similarly situated employees on the Commencement Date. The Company shall advise each employee set forth on Exhibit 5.9(a) of the Asset Purchase Agreement regarding the employee's eligibility for Retiree Medical Benefits at least ten (10) days before the Commencement Date. For a period of twenty four (24) months from the Commencement Date, IWC Transferred Employees cannot be terminated except for cause or subject to lay-offs or reductions in force. The Company shall continue to accrue benefits under the IWC Resources Corporation Employees' Pension Plan for all employees through December 31, 2002, and after that, for Bargaining Unit Employees pursuant to the CBA, as amended from time to time. The Company shall freeze the benefits under the IWC Resources Corporation Executive Supplemental Benefit Plan and the IWC Resources Corporation Deferred Compensation Plan at the Commencement Date. The Company shall convert the ESOP into a profit-sharing plan and shall contribute to the plan for all employees 1.5% of compensation through December 31, 2002, and after that pursuant to the CBA, as amended from time to time. The Company will pay scholarship benefits which were awarded to qualifying students prior to the Commencement Date under the T.W. Moses Memorial Scholarship program.

(f) The Company shall assign an individual employee of the Company to act as the "Operations Manager." The Department reserves the right to reject the Company's proposed Operations Manager. The Operations Manager shall be responsible, on a full-time basis, for the

management and oversight of the safe and reliable provision of all Services. The Operations Manager shall be expected to directly supervise the daily activities of Company personnel employed to operate, support and monitor all activities associated with the Services. The Operations Manager will be the primary Company liaison with the Department.

The Operations Manager shall be required to have a thorough working knowledge of the requirements of all Applicable Laws. The Operations Manager shall work cooperatively with the Department with respect to service quality, providing operational data, planning future service, responding to complaints and comments from customers and the general public, and responding to specific requests for other assistance.

As required, the Operations Manager shall attend all meetings and hearings pertaining to the provision of Services. This includes, but is not limited to, City-County Council meetings, Board meetings, and any and all citizen advisory group meetings. In the event the Operations Manager is unable to attend such meetings, the Operations Manager shall appoint a staff member with the authority to act on the Company's behalf and to appear as an agent of the Company in his or her place.

In the event the Operations Manager is unable to perform his or her duties, the Operations Manager shall appoint a staff member to serve in his or her place. The Company shall provide the Department-designated representative prior written notice whenever such appointment shall occur. If the Operations Manager is unable to perform his or her duties for more than two consecutive weeks, the Company shall assign another individual employee of the Company to act as a substitute Operations Manager, subject to Department approval and Applicable Laws.

(g) The Company designates James H. Buckler as the Company's initial Operations Manager. The Operations Manager, and any Department-approved successor, and all Company management employees assigned to the Waterworks on a full-time basis, shall, within ninety (90) days of the Commencement Date, comply with the Department's residency requirements, if any.

(h) The Department has selected the Company to perform the Services contemplated under this Agreement based, in part, on the past successful experience and expertise of the designated Operations Manager and the Company's key personnel, including the Operations Manager (the "Key Personnel"). The Company shall designate no fewer than three of its top managers as Key Personnel within sixty (60) days of the Commencement Date. Absent Department approval, the Company shall not replace any Key Personnel. In the event the Company desires to replace any Key Personnel for any reason, the Company shall provide the Department with ninety (90)-day's advance written notice or as much notice as is reasonably practicable under the circumstances.

In the event any Key Personnel voluntarily terminates his or her employment with the Company, the Company shall immediately provide notice to the Department.

The Department may require the Company to remove or replace any Key Personnel, with or without cause at any time. The Department, in its discretion, reserves the right to reject any candidate the Company proposes as a replacement or substitute Key Personnel.

(i) Commencing on or before ninety (90) days after the Commencement Date, the Operations Manager or an appropriate supervisory-level employee of the Company shall conduct a performance review session with each employee, for the purpose of giving each employee an opportunity to discuss the employee's job performance and future career development. The Company will endeavor to schedule and complete such performance review sessions within a period of thirty (30) days.

(j) The Company shall ensure that all management and personnel education and training relative to the operation, maintenance, repair and management of the Waterworks is continually updated on a scheduled basis, and that such management and personnel shall be recertified or relicensed, as applicable, as required or as recommended pursuant to Applicable Law. The Company shall provide training for all personnel involved in providing the Services. It is the sole responsibility of the Company to ensure that all personnel are fully knowledgeable of his or her duties and responsibilities. It is also the Company's responsibility to provide additional training if the training requirements specified by the Department are insufficient. All personnel who come in contact with the public in the performance of their duties must complete a City-approved sensitivity training/disability awareness course. The Company shall be expected to develop, implement, and maintain a formal training and retraining program for all personnel. The training and retraining program shall be submitted to the Department for review and comment. The program must provide a fixed minimum number of hours of training for new employees, including classroom instruction, and in-service training. The program must provide formal retraining methods, including criteria for determining the success of retraining efforts.

The Department reserves the right to inspect, review and monitor any and all training conducted by the Company. This includes, but is not limited to, inspection and review of all training materials, interviews with all training personnel, and monitoring of all training classes.

Each employee's training needs will be assessed against qualifications and experience required for each job description. Job skills enhancement training shall be provided by the Company for operations, collection and distribution systems, maintenance and management at all levels. The first round of training shall be concluded by the end of the first Billing Year with continued training throughout the term of this Agreement.

(k) The Company shall implement, as part of its in-house training program, a policy of assessing each new employee's training needs against the qualifications and experience required for each job description and, in consultation with the employee, shall develop for each employee an appropriate potential career path.

(l) The Company shall not unlawfully discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin,

age, disability, ancestry, disabled veteran status or Vietnam-era veteran status, nor commit any other unlawful or unfair employment practice and shall comply, to the extent applicable, with federal, state or local law, including Indiana Code §§ 22-9-1-10 and 5-16-6-1 and Indianapolis Municipal Code 581-102. The Company shall take affirmative steps to ensure that applicants are considered for employment, and that employees are dealt with during employment, without regard to their race, color, religion, gender, national origin, age, disabled veteran or Vietnam-era veteran status. Such affirmative steps shall apply to, but not be limited to, the following: hiring, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(m) The Company shall create, maintain, and document employee retention programs to minimize turnover among employees.

(n) The Company shall implement an appropriate drug and alcohol abuse testing policy as required or permitted by Applicable Laws and the current CBA, as amended from time to time. Reports of drug and alcohol testing programs, showing non-confidential information, shall be kept on file and made available to the Department upon request.

(o) The Company shall conduct appropriate background checks including, but not limited to, criminal record checks, subject to Applicable Laws.

(p) Unless terminated as provided in this subsection and subject to section 4.01(b)(15), the Company shall provide Retiree Medical Benefits to (1) all persons listed on the Schedule 5.9(h) provided by IWCR at Closing who were at the Commencement Date receiving Retiree Medical Benefits from IWC or the division of IWC comprising former UDC employees, including retirees, their spouses and surviving spouses, (2) all Bargaining Unit IWC Transferred Employees as required by the CBA, as amended from time to time, (3) all non-Bargaining Unit IWC Transferred Employees, their spouses and surviving spouses, who have, on or before December 31, 2004, met the eligibility criteria for Retiree Medical Benefits which were in effect at the Commencement Date (the earlier of (with at least five years of service): (i) age 55 with combined age and years of service of 70 or more, (ii) any age with combined age and years of service of 75 or more, and (iii) age 50 with 15 years of service and disabled ("Eligibility Criteria")). The Retiree Medical Benefits provided must be substantially the same as the health insurance and life insurance benefits that are at that time provided to active employees of the Company, and must satisfy the requirements of the CBA, as amended from time to time, except that health insurance provided after Medicare eligibility may be supplemental to Medicare. The Retiree Medical Benefits shall include 100% of the cost of the retiree health insurance, life insurance and Medicare Part B premium reimbursements for retirees and their spouses, but may incorporate a charge to surviving spouses of 100% of the cost of single coverage health insurance. The Company may (1) negotiate with all certified unions regarding a reduction of, termination of or amendment of the Retiree Benefits, and (2) seek from IWC Transferred Employees a knowing and voluntary waiver of their right to Retiree Benefits. The Company shall, at its expense, perform all administrative services related to Retiree Medical Benefits, including but not limited to, maintaining employee records necessary to determine eligibility for

Retiree Medical Benefits, determining eligibility for Retiree Medical Benefits, conducting actuarial evaluations from time to time, administering retiree claims, obtaining from the Grantor Trust the appropriate amounts to cover Retiree Medical Benefits premiums and claims and paying those premiums and claims, and reporting to the appropriate governmental entities. Retiree Medical Benefits shall be satisfied through retirees' participation in the Company's insurance programs. The Department shall pay to the Company each month from the Grantor Trust solely for the cost of the Retiree Medical Benefits that the Company provided to IWC retirees (but not to UDC retirees, their spouses and surviving spouses ("UDC Retirees")), including premium costs and claims, and to the extent permitted by law, administrative expenses, the previous month, as required by this Agreement. The Company shall at its own expense, and not out of the Grantor Trust, pay for all UDC Retiree Medical Benefits, except that the surviving spouse of a UDC Retiree may be charged 100% of the cost of single coverage health insurance. The Company shall be responsible for any accrued liability unvested as of January 1, 2005 associated with the Retiree Medical Benefits, based on actuarial valuations conducted from time to time, through such time as the Retiree Medical Benefits are terminated or any termination of this Agreement. Such responsibility shall include, to the extent permitted by Applicable Law, making contributions to the Grantor Trust for IWC Transferred Employees (but not UDC transferred employees) who are not vested in Retiree Medical Benefits as of January 1, 2005, commencing January 1, 2005. Except with respect to UDC transferred employees, to the extent the Company (i) continues to offer Retiree Medical Benefits to any employees who would first become vested in Retiree Medical Benefits on or after January 1, 2005, and (ii) timely makes the required contribution to the Grantor Trust for such Retiree Medical Benefits, the Retiree Medical Benefits shall be reimbursed from the Grantor Trust.

(q) At the Commencement Date, to the extent a Transferred Employee has not been paid for accrued but unused vacation or sick days, the Company shall credit the IWC Transferred Employees with the number of vacation days and sick days equal to the Transferred Employee's vacation day and sick day entitlement for the calendar year of the Commencement Date, reduced by the number of vacation days and sick days such Transferred Employee has taken on or before the Commencement Date and increased by accrued but unused vacation and sick days carried over from years prior to the year of the Commencement Date. To the extent permitted by law, after December 31, 2002, the Company will pay non-Bargaining Unit IWC Transferred Employees base wages or salary for vacation days which are carried over to the Company in excess of the vacation days permitted under the Company's vacation policy and will pay non-Bargaining Unit IWC Transferred Employees base wages or salary for sick days carried over at greater than the Company's allowable maximum of 20 days.

#### Section 4.03 Safety of Persons and Property.

On and after the Commencement Date and through the term of this Agreement, the Company shall:

(a) take all reasonable precautions, including security measures at least equal to the past security practices of the owner of the Waterworks, to prevent damage, injury or loss to the

Waterworks and property adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, Equipment, structures and utilities;

(b) establish and maintain safety procedures for the Waterworks for the protection of employees of the Company and all other Persons, including invitees and permittees to the Waterworks, at a level at least consistent with Applicable Law and in accordance with good management, operating and maintenance standards, procedures and practices for municipal systems;

(c) comply with all Applicable Laws that relate to the safety of Persons or property with respect to the Waterworks and its/their protection from damage, injury or loss; and

(d) designate a qualified and responsible representative of the Company whose duties shall include safety and the prevention of fires and accidents and to coordinate such activities as shall be necessary with federal, State, Department and other local officials.

#### Section 4.04 Equipment, Chemicals, Materials and Supplies.

(a) On and after the Commencement Date and through the term of this Agreement, the Company shall maintain and operate the Equipment in accordance with Exhibit 2.

(b) The Company understands and agrees that its obligations under this Agreement and the compensation specified herein for its performance of such obligations is based on, among other factors, its assumption of the Waterworks on an "as is" basis on the Commencement Date, including the then current state of repair and maintenance of the Waterworks.

(c)(1) The Parties shall, within ninety (90) days after the Commencement Date, conduct a physical inventory and current listing of all Equipment and Inventory of the Waterworks and update Exhibit 7 attached hereto. Exhibit 7 is attached as partial summaries of the inventories of Equipment and Inventory and therefore cannot be relied on as accurate. Such final inventory and updated listing shall include (A) the number, or, as applicable, units of all such Equipment and Inventory and (B) a reasonably detailed description of such items, including their physical condition, the date of purchase, the identification number, if any, and the manufacturer's name. Such inventory and updated listing shall be attached to this Agreement as Exhibit 7. The Company shall pay for the final inventory and updated listing. To the extent the Department desires to oversee the inventory, it shall engage a consultant and bear the cost.

The Company must use all reasonable care and perform needed predictive, preventive, routine and periodic maintenance to maintain the Equipment and Inventory, at all times, to the same or better condition than at the Commencement Date. The Department shall have the right to conduct periodic inspections of all Equipment and Inventories (as determined by the Department) for the purpose of verifying that needed upkeep of the Equipment and Inventories is being performed.



The Parties, through their independent expert provided for herein, shall (A) during the last ninety (90) days of the last Billing Year or (B) within ninety (90) days after termination, as distinguished from expiration, of this Agreement, conduct a physical inventory of such Inventory. At the termination of this Agreement, the beginning Inventory must be transferred to the Department, either in kind with equivalent Inventory of the time (performing the same or similar function) or with equivalent Inventory value, subject to increases and/or decreases in the Inventory over the term of the Agreement and subject to the Department's approval. To the extent the quantity of Inventory, as determined on an item-by-item basis, is less than that listed in Exhibit 7, as the same may be amended, such items shall, notwithstanding any provision in this Agreement to the contrary, be procured, repaired or replaced by the Company at its sole cost and expense. The Parties may mutually agree to reconcile Inventory on a total value basis, as opposed to an item-by-item basis. The Parties shall agree on and appoint a single independent expert to (A) perform a beginning inventory audit and listing for purposes of developing and completing Exhibit 7 (B) perform an ending inventory audit and listing and (C) make a determination as to whether the Company is obligated to repair, procure or replace any items upon the termination or expiration, as applicable, of this Agreement. The Parties shall appoint such expert within (A) twenty (20) days after the Contract Date for the beginning inventory and listing and (B) one hundred twenty (120) days or as soon as reasonably practicable before the anticipated termination or expiration of this Agreement to perform the ending inventory, listing and determination; provided, however, such ending appointment, inventory, listing and determination shall not serve to extend any termination or expiration date specified pursuant to any other Section of this Agreement.

(2) Equipment and Inventory provided or to be provided by the Company pursuant to this Agreement, and Equipment and Inventory provided or to be provided by the Department shall be listed in Exhibit 7 and shall be subject to this Section 4.04. Such Equipment and Inventory shall be restricted to the Company's use and only for that use which is necessary for the Company's performance of its obligations under this Agreement. The Company shall not use Equipment or Inventory other than for the Waterworks (or in connection with services provided by IWC as of the day before the Commencement Date).

(3) Upon the mutual agreement of each Party's Authorized Representative, Exhibit 7 may be shortened, expanded or otherwise modified from time to time. Any amended Exhibit 7 shall be binding on the Parties. Any such amendment shall (A) be confirmed by letter agreement executed by the Department and the Company; (B) be effective on the date of such execution unless the Department and the Company shall otherwise agree; (C) be appended to Exhibit 7; and (D) not be subject to the otherwise applicable requirements of Section 13.08, regarding formal amendment procedures. Equipment that is replaced by the Company or is no longer used and useful under this Agreement shall be returned to or, as applicable, made available for disposition by, the Department. Proceeds from the disposition of all replaced Equipment or Equipment that is no longer used or useful shall inure to the exclusive benefit of the Department.

(4) This Section 4.04(c) shall survive the termination or expiration of this Agreement.

Section 4.05 Operations.

(a) Beginning on the Commencement Date and through the term of this Agreement, the Company shall operate the Waterworks in compliance with Section 4.01(a), this Section 4.05, Prudent Utility Practices and at least in accordance with the standards that have been applied to the Waterworks for the five (5) years immediately preceding the Commencement Date.

(b) The Company's operation, maintenance and repair of the Waterworks shall include the following Field Operations:

(1) The Company will operate and maintain all distribution system piping, valves, remote booster pumping stations, meters, meter vaults, and ancillary facilities, including water main replacement and repairs, as needed to maintain and improve service. The Company will maintain an inventory of spare parts adequate to begin emergency response repairs within one (1) hour of notification of major main breaks or leaks. The Company will repair or replace streets, sidewalks, driveways, and other property damaged as a consequence of distribution system operations and maintenance.

(2) The Company will be responsible for vehicle fleet management and maintenance to the extent necessary to fulfill the responsibilities detailed herein, provided, however, the Department shall have the right to establish rules regarding the appearance and personal use of the fleet. The Company will be eligible to participate in the City's tax-exempt gas program, to the extent permitted by Applicable Law and the policies of the City.

(3) The Company will be responsible for reading all customer meters on a schedule that is at least as frequent as that used by IWC and for the installation of meters and service connections as needed in response to customer applications for service. The Company will use meters that are consistent with applicable Department standards, and will develop a meter repair, replacement, and quality assurance program approved by the Department as described on Exhibit 8.

(4) The Company will be responsible for continuing to develop, implement and administer the Waterworks backflow prevention and cross connection control program to protect the Waterworks and its customers. The program shall comply with all applicable Department, local, state and federal requirements and shall follow the general standard of care for the industry as outlined in Exhibit 1. This plan will be developed during the first year of this Agreement and implemented following approval by the Department. The plan will include an implementation schedule.

(c) To facilitate and clarify operating procedures and techniques with respect to the Waterworks, the Company shall develop, maintain and, as necessary, revise from time-to-time Operations and Maintenance Manuals and written standard operating and maintenance procedures to clarify, refine or supplement procedures provided in such Operations and Maintenance Manuals, or to describe operational practices which do not conform with such manuals. Such manuals and procedures shall at all times during the term of this Agreement be consistent with the Department's Operations and Maintenance Manuals and Exhibit 1 requirements under this Agreement. Any deviation from the Department's Operations and Maintenance Manuals must be approved in writing in advance by the Department.

(d) If during the term of this Agreement the Company fails to meet its obligations specified in this Agreement, but meets or demonstrates its compliance with any of the qualifications for relief specified in the proviso of Section 4.01(a)(2)(G), the Company shall not be liable for payment for any (1) fines or civil penalties imposed by any federal, State or local court or governmental regulatory and permitting agencies having competent jurisdiction or (2) damages specified in this Agreement to be paid to the Department; provided, however, if the Company's failure to meet such requirements is due to (A) its negligent act or omission, (B) its willful or wrongful action or inaction, or (C) its failure to meet or demonstrate its compliance with the proviso of Section 4.01(2)(G), the Company shall be solely liable for the payment of any such fine, civil penalty or damage as a consequence of such failure. Nothing in this Section 4.05(d) relieves the Company from its obligations to pay all permit and license fees.

(e) On and after the Commencement Date and through the term of this Agreement, if the Company shall fail to operate the Waterworks in conformance with all Applicable Laws, Prudent Utility Practice or this Agreement or the Company shall become aware of any activity, problem or circumstance relative to the operation or maintenance of the Waterworks that threatens or may threaten the public health, safety or welfare of the residents of the Department, the Company shall immediately (1) take all necessary and appropriate actions necessary to correct, mitigate and make notifications as required by Applicable Laws; (2) implement the Emergency Plan specified in Section 4.10, to the extent it is applicable to the situation; (3) consistent with Section 4.01(a)(6), notify the Department of such event. If prior authorization from the Department cannot be obtained in a timely manner under the circumstances, the Company shall make such necessary and reasonable expenditures to comply with its obligations under Section 4.05(d)(1).

(f) If the Department, during the term of this Agreement, procures, provides or implements a Capital Project pursuant to Section 4.01(b)(3), the Company shall fully cooperate with the Department, its employees, agents, consultants and contractors to facilitate and to give effect to Section 4.01(b)(3) in a timely and efficient manner. The Parties recognize and agree that they must coordinate their activities such that the activities referenced in Section 4.01(b)(3) can be accomplished in an efficient and timely manner while permitting the Company the ability to comply with its obligations under this Agreement, including, but not limited to, those obligations set forth on Exhibit 2.

If the Department decides to implement a Capital Project through the Company, the Company shall, on terms mutually agreeable to the Department and the Company, implement the Capital Project pursuant to the schedule agreed to in the Capital Plan, attached in Exhibit 8, and the Department shall provide funding over and above the Service Fee ("Additional Payments") for the costs related to the Capital Project and agreed to by the Parties in accordance with the provisions of Exhibit 4 (to the extent applicable). All buildings and facilities on the Waterworks are and shall remain the property of the Department and Capital Projects shall become and remain the property of the Department beginning with the earlier of the date they are procured, implemented or installed. The Company hereby covenants and warrants that notwithstanding anything in this Agreement that may be construed or interpreted to the contrary, the Company does not and shall not have any lien, security or other ownership interest in the Waterworks, a Capital Project, or any part thereof, and hereby waives, now and forever, any lien, security or other ownership interest it may or could otherwise have or allege to have under any Applicable Law, to any part of the Waterworks, or Capital Project. All Capital Projects shall be managed, operated and maintained in accordance with Prudent Utility Practice, Department standards and this Agreement. This Section 4.05(f) shall survive the termination or expiration of this Agreement.

(g) With respect to the laboratory requirements, the Company shall, during the term of this Agreement, perform testing, sampling and other analytical procedures consistent with all Applicable Laws, relative to the Waterworks at its cost and expense. All such samples shall be collected by the Company and delivered to a legally certified laboratory engaged by the Company at the Company's cost and expense, and testing shall be performed by such a legally certified laboratory. The Company may perform any testing, sampling and analytical procedure activities as it deems necessary at its cost and expense. The Company shall maintain laboratories and perform tests as necessary and provide the Department with the data from such tests.

(h) The Company shall perform Services contemplated in this Agreement, including, but not limited to, (A) collecting and presenting operational data, (B) record keeping activities required by applicable State, federal or local laws, regulations or ordinances, (C) attending meetings and hearings relative to the Waterworks or which may impact operation of the Waterworks, (D) making timely written analyses and recommendations performed as a matter of routine and Prudent Utility Practice relative to (i) proposed federal, state or local laws, regulations or ordinances that impact the cost of maintaining continued regulatory compliance, or (ii) proposed or draft federal, State and local regulatory initiatives applicable to the Waterworks, (E) analyzing and projecting of the capability of unit processes to meet projected production rates, (F) sharing information and insight on compliance and regulatory issues addressed by other projects and communities but such obligation shall not include any major data collection effort, (G) evaluating existing Department policies and documenting suggested changes to enhance operations and maintenance and environmental compliance, (H) commenting on the regulatory review processes (including regulatory review of rates of reimbursement), (I) providing assistance to the Department with changes and modifications to existing legislation or regulations and (J) developing alternative plans or scenarios; provided, however, no Company Party shall influence, attempt to influence or cause any other Person to influence any legislation,

agency action or final agency action, as those terms are defined in Indiana Code 4-21.5-1, with respect to any matter related to this Management Agreement, without the prior written approval of the Department.

(i) The Company shall establish, have in effect and implement on and after the Commencement Date and through the term of this Agreement, an effective QA/QC program relative to the Waterworks. The program shall include the use of USEPA, IDNR, IDEM or other approved programs or protocol. A copy of such QA/QC program shall be forwarded to the Department on the Commencement Date, and any amendment thereto shall be promptly forwarded to the Department.

(j) The Company, including the Operations Manager, and the Department shall actively pursue, establish and maintain a business-like, responsible and responsive working relationship with each other. The Company shall also actively pursue, establish and maintain such a relationship with Department officials and representatives, applicable governmental regulatory and permitting agency personnel and other Persons with which the Company and the Operations Manager have dealings relative to the Waterworks. During each Billing Month or, as necessary or appropriate, on a more frequent basis, the Company and Operations Manager shall meet with the Department to review operations, reports, on-going cost information and other data and information relating to the Company's obligations under this Agreement.

(k) Relative to the media, the Company shall consult with and receive the Department's approval prior to (1) responding to inquiries or (2) initiating contact, in either case, regarding the operation or maintenance of the Waterworks, Capital Projects, initiatives relative to reduction in commodity usage and attendant savings or sharing of economic benefits between the Company and the Department or other activities of the Department or the Company with respect to the Waterworks. The Company shall not use the name or logo of the Department, its member jurisdictions, its facilities, employees, officers or Board members in any advertising, brochures, public relations documents or news releases without the prior written consent of the Department; provided, however, the Company may use or furnish the Department's name, address and telephone number as a client reference.

(l) The Company shall actively pursue improvements in the effectiveness and efficiency of Waterworks operations and maintenance. The Company shall prepare and file a report with the Department within ten (10) days after each third Billing Month beginning with the sixth Billing Month after the Commencement Date as to the steps it has taken and is taking to give effect to this Section 4.05(l).

(m) In addition to any other odor and taste issues minimization programs the Company may implement as specified in Exhibit 1 and Section 4.01(a)(27)(M), the Company shall continue the implementation of the IWC's odor and taste control programs in effect on the Contract Date. The Company shall provide water of a quality, including as to taste, clarity and odor, equal to or better than that historically produced by IWC. The Company shall operate and maintain the Waterworks to minimize odor and taste issues and minimize customer complaints.

(n) The Company shall take all practical measures to minimize Service disruptions, noise, traffic disruptions, neighborhood impacts and other inconveniences due to its operations, construction, maintenance and repair activities of the Waterworks all in compliance with Applicable Laws.

(o) The Company shall present to the Department and the Department shall review and approve, the structure and expenditures for the R&D Program annually.

#### Section 4.06 Inspections.

The Department shall, (a) through its representatives and agents, (b) at the Department's sole cost and expense, (c) with the full cooperation of the Company, (d) without prior written or oral notice and (e) on a twenty-four hour (24) per day, seven (7) days per week basis, have full access to and the unlimited right to inspect the Waterworks, including performing sampling and testing, to determine whether the Company is in compliance with all of its obligations under this Agreement.

#### Section 4.07 Maintenance.

(a) During the term of this Agreement, the Company, consistent with Exhibit 1 shall:

(1) perform all corrective, predictive, preventive, periodic and routine maintenance or repair of the Waterworks as set forth on Exhibits 1 and 2.

(2) perform all predictive, preventive, corrective and routine maintenance and repair relative to the Waterworks and to the Equipment and rolling stock in accordance with the most stringent of Applicable Laws, and Prudent Utility Practice. The Company shall promptly draft Operations and Maintenance Manuals during the term of this Agreement and revise them (A) to update such Manuals as new data or information necessitates such updates, (B) as new Equipment is placed in service and such new Equipment necessitates revisions to such Manuals or (C) to reflect the Company's approach or method to operating and maintaining the Waterworks; provided, however, in no event shall any update, change or revision to the Operations and Maintenance Manuals provide for less stringent requirements, guidelines, recommendations or suggestions than are practiced by IWC on the Contract Date without the Department's prior written approval. In no event shall such maintenance and repair be less frequent and comprehensive than that recommended or specified in manufacturer's warranties and recommendations for the life of the Equipment or Waterworks without the prior written approval of the Department. The Contractor shall maintain a level of service including complete records and existing levels of redundancy that meets or exceeds the level of service described in Exhibits 1 and 2 of this Agreement; and

(3) maintain on behalf of the Department all manufacturer's warranties on new Equipment purchased pursuant to this Agreement, and fully cooperate and assist the Department,

at the Company's sole cost and expense, to enforce existing Equipment warranties and guaranties relative to the Waterworks. This Section 4.07(a)(3) is intended to require the Company to provide its advice and management personnel and employee participation (including Affiliate management personnel and employees) with respect to any such enforcement, but shall not include the provision or payment for outside legal representation or outside consultation.

(b) To give effect to Section 4.07(a), the Company shall:

(1) Within thirty (30) days after the Commencement Date, the Company's and the Department's representatives shall meet to discuss, evaluate and approve the scope and implementation of an MMS. Within one hundred twenty (120) days after the Department's approval of such system, the Company shall provide, program, install and maintain the MMS. The Company shall ensure that the programming, connection and integration of such system will be adaptable to and compatible with the Department's computerized system, as the Department's system may be modified and upgraded by the Department during the term of this Agreement. The Department shall provide the Company with reasonable access to the Department's computerized system integration areas for the purposes provided in the immediately preceding sentence of this Section 4.07(b). The Company's system shall be capable of and shall perform the following functions with respect to the Waterworks through the term of this Agreement:

(A) track, record and describe maintenance and repairs performed including detail as to whether such maintenance and repairs restored Equipment to full working order and if not, the steps required to do so;

(B) establish a program to monitor for and to schedule a corrective maintenance and repair program;

(C) maintain and continuously update a spare parts inventory;

(D) establish, maintain and update schedule prioritizing necessary and appropriate repairs;

(E) provide adequate information for Waterworks' operational planning;

(F) provide status reports for supervision and Agreement compliance monitoring;

(G) providing access by computer to the Department, at any time; and

(H) be in a format that integrates electronically with the Department's planned computerized accounting system.

(2) For purposes of implementing the first sentence of Section 4.07(b)(1), the Company's and Department's representatives shall establish a mutually agreeable milestone

approval schedule, consistent with Section 4.07(b)(1), for Department review, comment and approval relative to the provision, programming and installation of the MMS. The Company shall give the Department prompt notice of the achievement of each milestone event during the one-hundred twenty (120)-day schedule and provide the Department and its representatives and agents with (A) continuous access to and (B) review, comment and approval rights regarding the provision, programming and installation of such computerized program and system for the purpose of determining the extent, compatibility and comprehensive nature of the same. The Company shall fully cooperate and assist the Department, its representatives and agents, in this endeavor. To the extent that the Department, through its representatives and agents, believes that the program and system inadequately addresses the Company's maintenance and repair obligations specified in Section 4.07(a) as each milestone event is, in the Company's determination, achieved, the Department shall, within one (1) week after completion of its review of each such milestone event, provide the Company with written comments thereon or approve such event as having been successfully achieved. If the Department does not provide written comments or its approval within said one (1) week period, such milestone event shall be deemed to be approved by the Department. If the Department provides written comments but no approval, the Company shall promptly review the comments, correct the program and system to the extent necessary or appropriate to comply with its obligations under this Agreement and the Department's comments and provide a reasonably detailed written response to the Department's comments within one (1) week of its receipt of such comments. Within one (1) week of the receipt of the Company's written response to the Department's comments, the Department shall again review the Company's corrected program and system for purposes of determining whether the milestone event shall be approved. Thereafter, the approval process shall follow the procedure specified above as if such re-review was the first milestone event review. The relationship of the Parties is as stated in Section 13.05 and the Department's right to review, comment and approve the Company's program and system, or any similar provision contained in this Agreement, shall not be construed or read to infer that the Department is in any way responsible for the operation or maintenance of the Waterworks during the term of this Agreement. Any replacement of the MMS shall be with a system of equal or better quality and compatibility, subject to the approval of the Department.

(3) On and after the date the MMS is placed in service pursuant to Section 4.07(b)(1), the Company shall perform maintenance and repair in accordance with the requirements and schedules of the Waterworks and shall provide the Department with computerized access at any time; provided, however, compliance with the maintenance requirements and schedules specified in the MMS shall not relieve the Company of its obligations to perform maintenance as required in Section 4.07(a).

(4) All costs of computer hardware and software and license fees for computer hardware and software provided by the Company and license fees on Department-provided items utilized by the Company shall be a part of the Fixed Fee and not a Capital Project. Within ten (10) days after the termination or, as applicable, expiration of this Agreement, the Company shall provide the Department with the software, hardware and computer maintenance program established by the Company pursuant to Section 4.07(b)(1), as such program was upgraded and



revised, together with any applicable license, effective as of such termination or expiration date. The Department shall be responsible for maintaining any third party license after such termination or expiration. This Section 4.07(b)(4) shall survive the termination or expiration of this Agreement.

Section 4.08 Maintenance Policy and Energy Reports. The Company shall provide, in a timely manner, the following information to the Department on a regular basis as requested by the Department and as required by Exhibit 2, attached hereto:

(a) reasonably detailed information and recommendations to support the development of a long-term maintenance plan for the Waterworks, including cost-effective maintenance projects over the long-term (five years or longer) period and provide cost estimates of such projects;

(b) identification or recommendations of changes in Department rules, regulations and guidelines related to the Waterworks that may improve the quality or effectiveness of Department services;

(c) prudent and cost-effective strategy and proposals for long-term energy utilization relative to the Waterworks; and

(d) monthly meter reading reports to compare to the pumpage reports for the same month in order to analyze lost or unaccounted for water; new accounting software presently being implemented will be utilized that has the potential of being linked to the geographic information system, IMAGIS. Upon completion of this implementation of this software, the capability may exist for the accurate determination of customer demands based upon meter readings per district.

Section 4.09 Capital Projects. Within ninety (90) days after the Commencement Date, the Company shall have conducted a review of the Waterworks, provided the Department with a reasonably detailed report recommending, on a priority basis, Capital Projects, if any, that the Department, in its sole discretion and at its cost, in conformance with the Capital Plan described in Exhibit 8, may wish to undertake relative to preserving or upgrading of the Waterworks to facilitate compliance with Applicable Laws, and implement such plan ("CP").

(a) The Company shall develop an annual CP for review, comment, modification and approval by the Department, and for implementation by the Department. The CP must specify, in detail, the Capital Projects to be contemplated, and all costs associated therewith, including but not limited to costs of construction, installation, design, planning, scoping, construction administration, construction inspection, project management and project administration. The CP shall also include the schedule for each of these activities, priority (high, medium, low), and reason for each Capital Project listed on the CP.

(b) The Department shall determine (i) which Capital Projects shall be done and (ii) how those Capital Projects shall be implemented. If the Company is selected to implement the Capital Project, it shall comply with the Capital Output rate schedule set forth on Exhibit 4, to the extent applicable, unless the Board and the Company negotiate revised rate schedules. In the event a CCP includes work not covered in the Capital Outputs rates schedule set forth in Exhibit 4, that work will be reviewed and approved in the regular review and approval process. After the fifth anniversary of the Commencement Date, the following threshold events may, upon the request of either the Department or the Company, cause a negotiation to either increase or decrease the Service Fee.

(1) The 12 month moving annual average of daily finished water demand increases or decreases by 5 million gallons per day; or

(2) The customer base increases or decreases by 10,000 customers; or

(3) A new water treatment plant, major water treatment plant upgrade, a decommissioning of a water treatment plant, or a major system configuration change due to a Capital Project that has a significant impact on operation and maintenance costs.

The fifth year of operations will serve as the base for determining the change.

The adjustment to the Service Fee will be negotiated (up or down) and would constitute a new agreement for purposes of the Revenue Procedure. Such amounts shall bear interest at the rate set forth in Section 13.14 if paid within ninety (90) days from the date the threshold event was reached, and shall bear interest at the prime rate plus two (2) percentage points if paid after ninety (90) days from the date a threshold event was reached, provided in either case that the party seeking the negotiation has provided notice of the potential negotiation to the other party at least one hundred eighty (180) days prior to the date the threshold event is reached.

(c) For purposes of Capital Project classifications, the current CP and work plan, any CP thereafter and the examples set forth on Exhibit 5 shall assist, although they may not be the only guidance, in distinguishing Capital Projects from Operations and Maintenance Projects.

(d) The Company shall update such information in the CP annually by conducting such a review and preparing and filing such a report with the Department by May 31 of each calendar year beginning after the Commencement Date during the term of this Agreement. In preparing the reports required by this Section 4.09, the Company shall:

(1) conduct annual and more frequent periodic comprehensive inspections and evaluations of the Waterworks with the Department's Representative to evaluate and document conditions, and on-site inspections. The Company will also take all practical measures to minimize Service disruptions, traffic disruptions, neighborhood impacts and other inconveniences due to its operations, construction, maintenance and repair activities;

- (2) review the Department's capital improvement program;
- (3) participate in planning meetings with the Department; and
- (4) make recommendations with respect to needed or avoidable Capital Projects in the quarterly or annual report.

Section 4.10 Emergency Plan. After the Contract Date and prior to the Commencement Date, the Company shall prepare and complete a plan of action to be implemented in the event an emergency shall occur as described in Exhibit 8.

Section 4.11 Uncontrollable Circumstance; Company Fault.

(a) If either Party claims the occurrence of an Uncontrollable Circumstance as a basis for not performing its obligations under this Agreement, then the Party making such claim shall (1) provide prompt notice to the other Party of the occurrence of the Uncontrollable Circumstance; (2) provide an estimate of its expected duration; (3) describe its probable effect on the performance of its obligations hereunder; (4) exercise all reasonable efforts to continue to perform its obligations hereunder; (5) in accordance with this Agreement, expeditiously take action to correct or cure the Uncontrollable Circumstance; (6) exercise all feasible efforts to mitigate or limit damages to the other Party; and (7) provide prompt notice to the other Party of the cessation of the Uncontrollable Circumstance which gave rise to its inability to perform its obligations hereunder.

(b) If due to Company fault, the Waterworks is damaged to the extent of preventing Company performance in accordance with this Agreement, the Company shall comply with Section 4.11(a)(1) through (7). In the case of Company fault, the Company, notwithstanding any other provision in this Agreement, including Section 4.01(b)(3), shall be responsible to promptly restore or repair the Waterworks at the sole cost and expense of the Company. The Company shall have its repair cost obligations under this Section 4.11(b) offset and reduced to the extent property insurance proceeds are available and paid under Section 8.01(a)(6).

(c) Notwithstanding any provision in this Agreement that may be interpreted to the contrary, neither Party shall be relieved from any payment obligation under and pursuant to the terms and conditions of this Agreement due to the occurrence or continuance of an Uncontrollable Circumstance.

## SECTION 5

### SERVICE FEE

Section 5.01 Service Fee. (a) The Service Fee shall be the sum of the Fixed Fee and the Incentive Fee. Commencing with the first Billing Month and for each Billing Month thereafter, the Department shall pay to the Company the Fixed Fee pursuant to the terms and conditions of this Agreement. The Fixed Fee shall be billed on the first day of each calendar month and shall be paid by the 30<sup>th</sup> day of the same calendar month. Commencing with the first Billing Quarter and each Billing Quarter thereafter, the Department shall pay to the Company the Incentive Fee pursuant to the terms and conditions of this Agreement.

(b) The Company and the Department acknowledge and agree that this Agreement is intended to, and does comply in all material respects with the requirements of Section 141 of the Code and particularly Revenue Procedure 97-13, as such Revenue Procedure may be modified or superseded, from time to time (collectively, the "Revenue Procedure") as currently interpreted. If any provision of this Agreement should cause the Agreement not to comply with the requirements of the Code or the Revenue Procedure as interpreted from time to time, this Agreement shall be amended to comply with the Code and the Revenue Procedure. The Company and the Department acknowledge and agree that, notwithstanding anything in this Agreement to the contrary, this Agreement shall be amended by the parties in order to comply with any future legislative, regulatory or administrative changes to such provisions under the Code or the Revenue Procedure during the term of this Agreement.

#### Section 5.02 Calculation of the Fixed Fee.

(a) (i) For any calendar month, the Fixed Fee shall be \$33,303,508 divided by twelve (12). So long as the Department owns the UDC assets, the foregoing Fixed Fee shall be increased by an amount equal to \$332,313.50 per month, which results in a total Fixed Fee of \$37,291,270. The Department and the Company have entered into an Option and Terms Sheet for Purchase of Assets of Former Utility Data Corporation, set forth on Exhibit 14. Should the Company and Department enter into a definitive agreement for the purchase of UDC assets, upon the effective date of such definitive agreement between the Department and the Company, the Fixed Fee will be \$33,303,508.

(ii) It is the Department's intention to dispose of Irishman's Run assets as soon as possible. Until that time, the Company will be obligated to provide the services currently being provided by Irishman's Run.

(b) The Fixed Fee and the costs set forth in Exhibit 4 shall be adjusted annually, effective January 1 of each Billing Year, commencing with the second Billing Year, by an amount equal to the product of the Fixed Fee for the current Billing Year times the lesser of (i) two and one-half percent (2.5%) or (ii) 88.6% of the Annual Increase (as hereinafter defined) in the CPI. After the fifth full Billing Year, the Fixed Fee shall be adjusted annually, effective

January 1 of each Billing Year, by an amount equal to 88.6% of the Annual Increase in the CPI. The Annual Increase in the CPI shall be equal to: (i) CPI for the twelve-month period ending on the last day of the current Billing Year reduced by (ii) the CPI used to calculate the Annual Increase in the immediately preceding Billing Year; provided that in the second Billing Year, the CPI used in clause (ii) shall be the CPI for the twelve-month period ending as of April 30, 2002; provided further, if the foregoing amount is negative, the Annual Increase in the CPI shall be deemed to be zero percent (0%).

(c) If (i) the Department sells or otherwise disposes of a portion of the Waterworks or eliminates a territory from the District and such transaction results in a decrease of more than 2,000 residential customers of the Waterworks or a loss of commercial customers for the Waterworks with average daily consumption of at least 100,000 gallons, or (ii) the Department agrees to serve additional territories and add such territories to the District and such transactions results in an increase of more than 2,000 residential customers for the Waterworks or the addition of commercial customers of the Waterworks with average daily consumption of more than 100,000 gallons, the parties shall, in compliance with the Revenue Procedure and this Agreement, renegotiate the Agreement and the Fixed Fee.

#### Section 5.03 Calculation of the Incentive Fee

(a) For any Billing Year, the Incentive Fee shall be equal to an amount not to exceed twenty five percent (25%) of the Fixed Fee for such Billing Year (the "Maximum Incentive Fee"). For each Billing Year, the Incentive Fee shall be calculated based on an assessment by the Department of the performance of the Company with respect to the performance measures set forth in Exhibit 12. The Incentive Fee set forth in Exhibit 12 comprises six incentive criteria, Customer Service, Water Quality, Capital Assets Replacement Cycle, Capital Investment Adjustment, Technical O&M and Discretionary Measures ("Incentive Criteria"). Each of the Incentive Criteria is divided into various subcomponents ("Subcomponents") with associated performance measures, which have been assigned weighted percentages. Subject to the provisions of Exhibit 12, the Department shall pay the Company the Incentive Fee based upon the total percentage obtained by adding the percentages attributable to each Subcomponent that is fully satisfied by the Company.

(b) For each Billing Quarter during a Billing Year, the Department shall pay the Company 60% (the "Interim Percentage") of the Maximum Incentive Fee for such Billing Year divided by four. Within thirty (30) days of the end of each of the first three Billing Quarters, the Department shall notify the Company of any adjustment to the Interim Percentage which the Department, in its discretion, deems appropriate to properly reflect the assessment made by the Department of the Company's performance with respect to the measures comprising the Maximum Incentive Fee as of the most recent Billing Quarter. In connection with such adjustment, the Department will provide an interim report of some or all of the performance measures used in computing the Maximum Incentive Fee. Amounts paid by the Department each Billing Quarter to the Company under this paragraph are collectively referred to as

"Periodic Payments." The Incentive Fee shall be paid by the 45<sup>th</sup> day after the end of each Billing Quarter.

(c) Within forty-five (45) days of the last day of each Billing Year, the Department shall provide a report which sets forth the final assessment by the Department of each of the performance measures used in computing the Maximum Incentive Fee for the preceding Billing Year, the amount of Incentive Fee to which the Company shall be entitled for such Billing Year based on such assessment, and a calculation of the difference between the aggregate amount of the Periodic Payments advanced to the Company for such Billing Year and the amount of such Incentive Fee. The Incentive Fee to be paid to Company for any Billing Year shall not exceed the Maximum Incentive Fee for such Billing Year. If the Department has advanced Periodic Payments to the Company in excess of the Incentive Fee due for such Billing Year, the Company shall repay the difference to the Department within fifteen (15) days of receiving such report. If the Periodic Payments advanced by the Department to the Company are less than the Incentive Fee due for such Billing Year, the Department will pay the difference owed the Company within fifteen (15) days of delivery of such report.

Some or all of the performance measures used to calculate the Maximum Incentive Fee may be assessed as of the last day of each Billing Quarter; however, final assessment of such measures for each Billing Year shall be made as of the last day of the Fourth Billing Quarter of each Billing Year. To avoid any uncertainty, the calculation of the Maximum Incentive Fee shall account for the sale of UDC if such sale occurs.

#### Section 5.04 Service Fee Changes.

(a) The Service Fee may need to be renegotiated on and after the Commencement Date based on the occurrence of an Uncontrollable Circumstance or other catastrophic damage to the Waterworks. The Parties agree to use their best efforts to renegotiate the Service Fee to reflect such occurrence. Any such negotiated adjustment in the Service Fee will result in the Agreement being treated as a new agreement for purposes of determining compliance with the requirements of the Revenue Procedure and the Code.

(b) If, during any Billing Month, an Uncontrollable Circumstance shall occur or damage to the Waterworks shall occur, the Company shall exercise its best efforts to reduce operations and maintenance expenses, and shall, within three (3) days, meet with the Department to discuss measures the Company shall take to give effect to this Section 5.04(b). The Company shall, as soon as practicable under the circumstances, provide the Department with a report itemizing the measures to be taken, an analysis of the financial impact of such occurrence, if any, and the adjustment, if any, recommended to the Fixed Fee or the Incentive Fee.

Section 5.05. Reimbursement to Department. The Company shall immediately reimburse the Department for any of the following payments, made by the Department:

(a) permit fines and penalties the payment of which is the Company's responsibility;

(b) permit fees, exclusive of the fees and costs to obtain the Department's Title V operating permit required by the Clean Air Act, as amended, 42 U.S.C. §§ 7661 to 7661c, or equivalent state operating permits;

(c) unless the Parties otherwise agree, all utilities shall remain, for administrative and other facilitative purposes, in the Department's name for payment directly by the Department to the provider of such utility services, but which in any and all events are, for purposes of this Agreement, the obligation of the Company;

(d) any other payment by the Department for which the Company is responsible to pay under this Agreement.

In the event the Department is not immediately reimbursed by the Company for such payments, the Department may withhold the amount of such payment from the Fixed Fee owed to the Company. The Department shall reduce the amount of the Fixed Fee for the Billing Month in which payment occurs to reflect such payment; provided, however, to the extent such payments exceed the Fixed Fee for such Billing Month, such excess shall be carried forward to be offset against the Fixed Fee for the immediately succeeding Billing Months until such payments are reimbursed in full to the Department. Any remaining balance shall be due and payable to the Department on termination of this Agreement.

#### Section 5.06 Information, Data and Reports.

(a) The Company shall, to the extent the timeframe for preparing and filing information, data and reports with the Department is not otherwise prescribed in this Agreement, file the following information, data and reports with the Department in form and substance reasonably acceptable to the Department for the immediately preceding Billing Quarter:

(1) any as-built drawings, including in electronic form, and other modification materials and a statement summarizing the Capital Projects and other services, if any, to the extent undertaken by the Company at or to the Waterworks;

(2) insurance claims filed or pending dispositions for those occurrences filed, which relate to the performance of the Services or the operation and maintenance of the Waterworks;

(3) any and all correspondence, citations, notices, directives or similar information received from any federal, State or local governmental regulatory agency having jurisdiction over the operation, maintenance or ownership of the Waterworks not otherwise provided to the Department by the Company at an earlier date pursuant to this Agreement;

(4) all transaction records, data and information arranged or performed by the Company, or for the benefit of the Department or the Company, as may be reasonably requested by the Department, relative to the Waterworks;

(5) a report of all customer service calls and responses;

(6) a report of all customer complaints and actions taken with respect to each such complaint;

(7) a description of all Field Operation activities;

(8) a summary of compliance status and effluent quality, including identification of any violation that occurred;

(9) a summary of operations and maintenance activities, including process control results and identification of maintenance backlogs;

(11) a summary of any accidents or incidents related to health and safety; and

(12) a list of Capital Projects planned or undertaken by a Person other than the Company, and the status of the same, in accordance with the reporting requirements set forth on Exhibit 8.

(b) The Department reserves the right, upon notice to the Company, to prescribe and alter from time-to-time the reports referenced in Section 5.06(a). The Department may also reduce, expand or otherwise modify the format, amount or type of information, data and reports required to be prepared and filed with the Department by the Company pursuant to Section 5.06(a).

(c) All data and information collected, generated, prepared, or provided by the Company as required by or pursuant to this Agreement shall be and remain the property of the Department and shall be turned over to the Department within ten (10) days after the earlier to occur of the termination or expiration of this Agreement; provided, however, the Company may retain copies of all such information at its sole cost and expense. The Company shall also transfer any and all computer software, hardware, licenses, source codes and other similar information used in preparing or storing such data and information to the Department, at no cost to the Department other than future license fees to third party licensors, within ten days after termination or expiration of this Agreement.

(d) The Company shall, upon the request of the Department at the termination or expiration of this Agreement, promptly deliver to the Department, at no cost or expense to the Department, two copies of (1) the Operations and Maintenance Manuals relative to the Waterworks, (2) the standard operating procedures, (3) any other work product with respect to the operation of the Waterworks produced during the course of this Agreement and (4) any



revisions to (1) through (3). As-built drawings shall be included in such manuals and such manuals shall incorporate such drawings as they occur.

(e) This Section 5.06 shall survive the termination or expiration of this Agreement.

## **SECTION 6**

### **INDEMNIFICATION AND LIMITATION OF LIABILITY**

#### **Section 6.01 Indemnification.**

(a) Except as expressly provided in Sections 6.01(b) or (c), the Company shall defend, indemnify and hold harmless each Department Party from and against all liabilities, obligations, claims, losses, expenses (including attorneys' fees) of every kind and nature whatsoever (including, but not limited to, actual or alleged violation of any law, ordinance, regulation, order, other judicial or administrative decree or any common law duty), claim incurred by third parties, (each, a "Liability" and collectively, "Liabilities"), arising for or by reason of the Company's negligent duties, obligations or performances under this Agreement, that actually or allegedly is caused by or results from, in whole or in part, any negligent act or omission of a Company Party or anyone for whose acts any of them may be liable, or that is proximately caused by the Company's conduct in terminating Retiree Benefits.

The Company shall use reasonable best efforts to incorporate this indemnification obligation in all subcontracts entered into with suppliers of materials or services, and all labor organizations who furnish skilled and unskilled labor, or who may perform any such labor or services in connection with a contract entered into hereunder.

The indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Company Party, any subcontractor, or any subcontractor of a subcontractor under worker's compensation acts, disability benefit acts, or other employee benefit acts. The Department shall promptly notify the Company of all notices of claims and tender the defense of claims. The Parties agree to exercise all reasonable efforts to cooperate with one-another to the extent their respective interests may appear.

The Company's indemnity obligation includes indemnification for all reasonable expenses, court costs and attorney fees, including those incident to appeals incurred by or imposed upon the Department Parties in connection with enforcement or defense of the Department Parties' right to indemnity hereinabove provided. In addition, the Company agrees that the Department Parties may employ any attorney (or attorneys) of their choice and/or may use its in-house counsel in a matter or to enforce or defend the Department Parties' right to the indemnity hereinabove provided. However, if the Department Parties engage their own legal counsel, and the Company has engaged or offered to engage legal counsel to defend the Department Parties in the matter, the Department Parties shall bear their own costs and expenses

of their legal counsel, unless the Company's and Department Parties' positions in the matter are in conflict, in which case all reasonable costs and expenses of the Department Parties' legal counsel shall be borne by the Company.

(b) The Company need not indemnify and defend the Department Parties for Liability arising from the underground contamination of Department property, including environmental remediation or clean-up, except to the extent such contamination was caused or aggravated by the Company's management, operation or maintenance of the Waterworks in violation of duties imposed under this Agreement. If property or groundwater contamination is discovered and was caused or aggravated by the Company Parties' operation or maintenance of the Waterworks in violation of duties imposed under this Agreement, then the costs associated with such Liability shall be apportioned between the Company and the Person responsible for such costs (or the Department, if no responsible other Person can be identified), if and to the extent it is possible to divide such costs, according to the degree of responsibility the law assigns to each. If the costs associated with such Liability cannot be apportioned in accordance with the immediately preceding sentence of this section, the Company and the Department shall equally share the costs. This Agreement does not alter any Liability the Department may have prior to the Commencement Date for environmental remediation, environmental restoration, environmental repair or natural resources damages, under the Indiana Solid Waste Management Board's Hazardous Waste Management regulations at 329 IAC 3.1, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C §§ 9601 to 9675, as amended, the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 to 6992k, as amended, and the Federal Water Pollution Control Act, 33 USC §§1251 to 1387, as amended.

(c) The Company need not indemnify nor defend the Department Parties for Liability arising from construction project design or construction performed by third parties contracting with the Department. The Parties shall bear their own costs of defense and such Liability as the law assigns to each.

(d) With respect to this Section 6.01, the Parties shall have the right to defend their respective interests. The costs for such defense shall be included as part of the costs of Liability of the responsible Party pursuant to this Section 6.01.

(e) To the extent a Department Party requires any indemnity in any contract with a Department contractor relative to the Waterworks, the Department Party hereby agrees to include the Company as an indemnified party in any such indemnification. The Company shall give prompt written notice of a claim and tender the defense when invoking any right of indemnification.

Section 6.02 Limitation of Liability. The Company and the Department acknowledge and agree that because of the unique nature of the undertakings contemplated by this Agreement, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by the Department or the Company as a result of a breach of this Agreement. In no event, however, shall the Department Parties or the Company Parties be liable for or

obligated in any manner, except to the extent of indemnification of claims of third parties pursuant to Section 6.01, to pay incidental, special, punitive, consequential or indirect damages of any nature to the other Party because of a breach of this Agreement (including acts of negligence, omissions or strict liability), warranty, delay or otherwise, arising out of the performance or nonperformance by the Department Parties or the Company Parties of their obligations under this agreement, including, without limitation, suits by third persons, incurred by it whether occurring during or subsequent to the performance of this Agreement.

Notwithstanding the above, the Company shall not be held liable for matters that are Pre-Closing On-Site Conditions or Pre-Closing Product Liabilities or that were caused by material misrepresentations of fact. However, if appropriate under the circumstances, and as provided in Section 13.24 of this Agreement, the Company shall first seek indemnification from a third party prior to seeking indemnification from the Department. If there exists a mutual mistake, unless one party had greater ability to determine or discover the mistake in advance, neither party shall seek indemnification from the other.

Section 6.03 Survival. This Section 6 shall survive the termination or expiration of this Agreement.

## **SECTION 7 DISPUTE RESOLUTION**

Section 7.01 Coordination Committee to be Created.

(a) Time for Appointment, Term of Appointment and Replacement. To facilitate the timely and effective resolution of any controversy or dispute that may arise under this Agreement, each Party shall appoint three (3) representatives to serve on joint Department/Company Coordination Committee, within the first thirty (30) days after the Commencement Date. Written notice of each appointment shall be delivered to the other Party. Each appointed representative shall serve until resignation, death or replacement in the absolute and unreviewable exercise of discretion of each appointing Party. The appointed representatives are subject to change and written notice of any such change shall be delivered to the other Party.

(b) Purpose. The committee shall meet as often as the circumstances may deem necessary, but not less than once each calendar month, to resolve controversies and disputes.

(c) Procedure. To the extent the Company Parties and Department cannot, after good faith attempts, resolve any controversy or dispute that may have arisen under this Agreement, either one or more of the Company Parties or the Department, to the extent its interests are adversely affected, may refer the matter to mediation in the State, the cost of which shall be borne equally by the Department and the Company. Any litigation commenced after mediation must be commenced in the Marion Circuit Court, Indianapolis, Indiana, exclusive of any other judicial forum that may have jurisdiction over the matter.

Section 7.02 Covenant to Perform. The Company Parties and Department shall continue to perform their respective obligations under this Agreement, without interruption or slowdown, pending resolution of any dispute(s), unless the matter at issue precludes such continued activity.

Section 7.03 Survival. This Section 7 shall survive termination or expiration of this Agreement.

## **SECTION 8 INSURANCE**

Section 8.01 Insurance Procurement; Duty to Maintain; Obligation to Provide Continuous Coverage.

(a) Procurement. Throughout the term of this Agreement the Company, on its own behalf and on behalf of any one directly or indirectly employed by it for whose acts or omissions it may be liable, shall secure, or cause to be secured, and maintain, at its cost and expense, including premium payments, the following insurance policies with the below specified policy limits. Cost and expense, including premium payments, will be separately identified but included in the Service Fee.

(1) Workers Compensation. Statutorily required workers compensation insurance, as well as employer's liability insurance in an amount not less than \$1,000,000 for each accident, \$1,000,000 each employee, \$1,000,000 policy limit for disease, for all of the Company's employees to be engaged in work provided for in this Agreement and, in the event any such work is subcontracted, require the provision of workers compensation and employer's liability insurance for all of the employees of any subcontractor to be engaged in such work. Coverage shall be included to cover federal Longshoreman's and Harbor Worker's Act, the Federal Jones Act, and the federal Employee Liability Act. The Company shall also maintain insurance covering it against claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of a workers compensation law. Policies hereunder shall include an "all states" endorsement, voluntary compensation endorsement, waiver of subrogation in favor of the Department, and Foreign voluntary compensation coverage.

(2) Motor Vehicle Liability. Motor vehicle liability insurance written in business auto policy form to protect the Company and any subcontractors provided use of Company's vehicles, including vicarious liability of subcontractors while operating subcontractor's vehicles, all while performing work covered by this Agreement. Such coverage shall apply to claims for injuries, including accidental death to members of the public and damage to property of others arising from such use of motor vehicles, and such policies shall cover the operation on or off the site of all motor vehicles licensed for highway use whether they are owned, non-owned or hired. Primary and non-contributory additional insured status should be provided to the Department on policies of the Company and its subcontractors. The limits for such policies are as follows: combined single limit of bodily injury and property damage each accident \$1,000,000, with symbol #1 on any auto; medical payments, each person, \$5,000,

symbol #2 on all owned autos; uninsured motorists, each accident, \$1,000,000, symbol #2 on all owned autos; underinsured motorists, each accident, \$1,000,000, symbol #2, all owned autos; comprehensive coverage \$1,000 deductible, symbol #2, #8, all owned and hired autos; hired car physical damage coverage, \$75,000 limit, \$1,000 deductible, to be borne by the Company, comprehensive and collision. Exclusions for fellow employee and pollution liability shall be deleted. Employees shall be included as additional insureds while operating company owned or hired autos on business for the Department. Mental anguish and mental injury shall be included under bodily injury. Waiver of subrogation shall apply as agreed to by existing contracts and shall also be extended to the Department. Garagekeepers' direct primary and legal liability coverage shall be included with limits of \$1,000,000, symbol #30, comprehensive and collision deductible of \$500 to cover vehicles left in the insured's garages for safekeeping, storage and maintenance. Additional provisions will provide ninety (90) days written notice of cancellation and non-renewal to the Company and the Department and thirty (30) days notice of cancellation for non-payment of premium. To the extent such coverage is available in the insurance marketplace, there shall be no exclusions for terrorism or punitive damages or losses resulting from terrorism.

(3) Comprehensive General Liability. Commercial general liability insurance to protect the Company against all claims arising from injuries to members of the public or damage to property of others, including loss of the use of tangible property damaged, arising out of any act or omission of the Company or its agents, employees or subcontractors. This policy or policies shall include appropriate endorsements to protect the Board and the Department against claims, demands and lawsuits from employees of the Company its contractors and any of its subcontractors. In addition, this policy shall specifically insure the contractual liability assumed by the Company under Section 6. Comprehensive general liability coverage shall contain the following provisions:

- (A) all premises and operations including work performed within 50 feet of railroad;
- (B) no exclusions for explosion, collapse, or underground damage;
- (C) contractor's protective coverage for independent contractors and subcontractors employed by the Company;
- (D) contractual liability for the obligations assumed in the indemnification provision in Section 6, and waiver of subrogation as provided in Section 8.02(a)(3);
- (E) personal injury liability, included in contractual liability coverage;
- (F) employees included as additional insureds (and deletion of fellow employee exclusion);

- (G) cross liability coverage;
- (H) incidental medical malpractice coverage;
- (I) contractual liability, including coverage for work which may be performed under this Agreement at railroad rights-of-ways;
- (J) coverage of operations involving the removal of hazardous materials, if such work is to be performed;
- (K) completed operation and product liability coverage for the period of three (3) years after the expiration or termination of this Agreement;
- (L) automatic reinstatement of aggregate liability limits or a provision requiring the Company to certify quarterly that the aggregate liability limits are fully available;
- (M) coverage for unintentional errors and omissions;
- (N) include waiver of government immunity;
- (O) broad form additional insured endorsement to pick up all insureds automatically as required by written or oral contract or permit;
- (P) waiver of subrogation in favor of the Department; automatic waiver of subrogation is to apply to entities as required by contract;
- (Q) mental injury or mental anguish and humiliation under definition of personal injury or under definition of bodily injury;
- (R) inclusion of directors, officers, administrators, volunteers and managers as additional insureds;
- (S) assault and battery coverage;
- (T) coverage for punitive or exemplary damages;
- (U) defense costs to be unlimited and to apply to all coverages outside policy limits;
- (V) under other insurance clause, policy to be excess over other collectable insurance afforded under policies purchased by other organizations, which include the Department and which name the Department as additional insured;

(W) coverage for all mobile equipment owned by the Department to be covered both on and off premises;

(X) coverage of property in the care, custody or control of the Department for which it is liable by contract or agreement;

(Y) coverage for misdelivery of liquid products;

(Z) amendment of other insurance provision endorsement to be attached;

(AA) stop gap liability for all monopolistic states, if applicable;

(BB) to the degree available in the insurance marketplace, there shall be no exclusions for terrorism; and

(CC) to the degree available in the insurance marketplace, there shall be no exclusions for mold.

The liability limits shall not be less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

(4) **Umbrella Excess Liability Insurance.** A policy or policies of umbrella excess liability insurance with liability limits of \$50,000,000 each occurrence for all liability and \$50,000,000 in the aggregate per policy year. The wording of the umbrella excess liability policy or policies shall be at least as broad as the primary or underlying policy or policies and shall apply both to the Company's general liability, automobile liability and employers liability insurance, (and shall be written on an occurrence basis). There shall be no exclusion of coverages for punitive damages. The Company is granted the option of arranging coverage under a single policy for the full limit required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy equal to the total limit(s) requested. No retention or deductible shall apply. First dollar legal defense and supplementary payment on all claims not covered by underlying insurance shall be included. If primary limits are exhausted, ninety (90) day provision for replacing primary limits shall be included. Appeals provision is to be amended to provide that if the insurance company initiates appeal and appeal judgment is in excess of policy limits, insurance carrier is responsible for amounts in excess of limits. If umbrella coverage limits are written in layers, each layer of coverage shall be concurrent with the full umbrella layer. In each layered policy, coverage shall comply with the first layer of controlling underlying umbrella. Premium shall be non-adjustable with no audit provision. To the degree available in the insurance marketplace, the terrorism exclusion, if any, shall be deleted. Defense costs shall be outside policy limits. Subcontractors employed by the Company shall not be required to comply with this umbrella requirement.

(5) Environmental Liability Insurance. A policy or policies of environmental liability insurance with liability limits of \$40,000,000 per occurrence and \$40,000,000 aggregate. Such policy shall not contain a pollution exclusion clause and shall insure against bodily injury, property damage and economic loss arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants, including clean up costs, at or from any premises, site or location which is or was at any time owned or occupied by the Company, its contractors or subcontractors, under this Agreement, and shall also include coverage for actual, alleged or threatened discharge, dispersal, release or escape of pollutants which are or were at any time transported, handled, stored, treated, disposed of or processed as waste during or because of the work required under this Agreement by or for any insured or any Person for whom the Company may legally be responsible. Job sites shall be included for coverage. There shall be coverage for punitive damages.

(6) Property Insurance. A policy or policies insuring the Department and the Company against loss or damage of its property, property or others and loss of use. Coverage will be provided under special perils form including flood and earthquake. Sublimits for flood and earthquake will be agreed upon. There will be no coinsurance. Agreed amount coverage will be applicable. Deletion of the testing exclusion will apply. The exclusion for faulty design, workmanship or materials shall not apply to resultant loss to otherwise sound property. Subject to the blanket limits of liability, or sublimits for specific coverages, all coverages will include guaranteed replacement cost for buildings and personal property per the schedule to be provided. This will include leased or owned mobile equipment. Deductibles of \$50,000, \$100,000, \$150,000, \$200,000 and \$250,000 will be considered. Property covered will include exterior signs, lights, fences, glass, walls, underground piping, wiring and foundations. Blanket time element coverage including EDP exposures and statement of values will be supplied. Blanket time element coverage (business interruption) will include ordinary payroll for 180 days, include 12 months extended period of indemnity, and include contingent business interruption at same blanket limit as business income. Ordinance or law coverage shall be included at same limit as blanket property limit. Time element coverages to apply to off premises power failure, sublimit \$5,000,000, including above ground and below ground lines; water, telephone, electric and gas utilities; include cable and fiber optic cable. Transit limit of \$500,000, with a \$10,000 deductible is to be included for property transported by common or contract carrier, owned or leased vehicles, aircraft and rail. Newly acquired real and personal property with blanket limits of \$2,000,000 shall be automatically covered, subject to minimum notification of 120 days. Coverage shall include business renovation. Builders risk limits for all scheduled properties shall be at same limits as blanket real and personal property. Replacement cost coverage is to apply to all leased equipment for which the Department or the Company is responsible. Replacement cost coverage for personal property of others in the care, custody and control of the Department is required. Joint loss agreements for property and boiler are included. EDP limits will be a separate replacement cost blanket limit based upon schedule to be provided. These are in addition to the blanket property limits. EDP coverage is to apply to any computer-operated piece of equipment, software and communications equipment. Perils insured against shall be "All Risk" including flood, earthquake, mechanical breakdown, off premises power failure, above ground power lines and below ground power lines. The limit of coverage for unnamed



locations shall be \$2,000,000 blanket real and personal property. Boiler and machinery including miscellaneous electrical apparatus and business interruption with extra expense coverage will be included based upon values to be provided. Comprehensive form shall include production equipment. Sublimits shall be included as follows: ammonia contamination \$500,000, expediting expenses \$500,000, hazardous substance \$500,000, water damage \$500,000, and consequential damage and change in temperature \$500,000. Coverage shall be included for broken or cracked pumps or water equipment subject to deductible. Off premises service interruption limit to be provided to include above ground electrical lines and below ground electrical lines. Debris removal limit of \$10,000,000 shall be in addition to real and personal property limits. Business income is to include any increased period due to enforcement of law regulating control, repair, clean up or restoration including environmental damage. This coverage will also be inclusive of contingent business income. Business income coverage will include ordinance of law coverage for boiler and EDP. Terrorism coverage will be provided subject to a sublimit of \$5,000,000. Additional terrorism coverage, if required by the Department, is subject to additional premium costs to be paid by the Department. Mold will be excluded as a peril, however, it will be covered if resultant damage arises from a covered loss.

(7) Employment Practices Liability. The Company shall maintain during the life of this Agreement, employment practices liability insurance with minimum limits of \$10,000,000 each loss and \$10,000,000 annual aggregate. Maximum deductible or self-insured retention shall not exceed \$250,000 annual aggregate. Named insured shall include both the Company and the Department as respects employees and operations of IWRC. Defense costs shall be in addition to policy limits. Policy shall be written on "Pay on Behalf of Insured" form. There shall be coverage for punitive damages. Significant exclusions should be noted in writing and coverage shall be subject to approval by the Department's insurance consultant.

(8) Fiduciary Liability. The Company shall maintain during the life of this Agreement, fiduciary liability insurance with minimum limits of \$10,000,000 each loss and \$10,000,000 annual aggregate. Maximum deductible shall not exceed \$250,000 annual aggregate. Named insured shall include both the Company and the Department as respects the employee benefit, pension and 401(k) plans for IWCR. Defense costs shall be in addition to policy limits. Policy shall be written on "Pay of Behalf of Insured" form. Significant exclusions should be noted in writing and coverage shall be subject to approval by the Department or by its insurance consultant.

(9) Comprehensive Crime. The Company shall maintain during the life of this Agreement, comprehensive crime coverage with minimum limits as follows:

(A) 401(k) coverage to comply with ERISA requirements in an amount equal to or greater than 10% of plan assets;

(B) Blanket Employee Dishonesty (Form A) - \$5,000,000 to include third party coverage naming as third party, the Department of Waterworks for The City of Indianapolis;

(C) Forgery or Alteration (Form B) to include third party coverage naming as third party, the Department of Waterworks for The City of Indianapolis; and

(D) maximum deductible aggregate options of \$100,000 and \$250,000 should be shown.

(b) Duty To Maintain. Each policy shall be secured prior to the Commencement Date and the policies shall be continuously maintained through the term of this Agreement.

(c) Continuous Coverage. The Company shall assure continuous coverage if any policy is canceled, not renewed or materially changed. The Company shall, at its own expense, pay such extra premium as required to assure no lapse of coverage for any time period.

(d) Policies Of Insurance; Certificates As Evidence Of Insurance. Copies of all policies of insurance shall be furnished to the Department thirty (30) days prior to the Commencement Date for the Department's review and approval. If a policy is for any reason rejected by the Department or if a policy is canceled, not renewed or materially changed, a certificate for the substitute policy shall be submitted to the Department as early as possible before the commencement of the policy period for the Department's review and approval. The Company shall annually supply the Department with proof of insurance in the form of a policy or certificate.

#### Section 8.02. Policy Requirements And Company Obligations.

(a) Required Provisions of Insurance Policies. The policy or policies procured, or caused to be procured hereunder, shall satisfy the following requirements:

(1) Each policy shall specifically insure the Company's indemnification obligation under Section 6.01.

(2) Each policy shall provide by endorsement that the Department is to be given notice ninety (90) days prior to every cancellation, non-renewal, or material change of such policy.

(3) Each policy shall provide that the Company and the Company's insurers shall have no right of recovery or subrogation against the Department or the Company. The intention of the Parties is that any insurance policy by the Company shall protect both Parties and it is intended to be the primary coverage for any losses covered by the insurance policies.

(4) The Board, the Department and the employees of the Board and the Department shall be named as additional insureds on a primary and non-contributory basis with respect to the Company's commercial general liability policy, business or auto and umbrella policies. The additional insured status is limited to liability arising out of Waterworks operations conducted by the Company. As respects the property policy, the Board and the Department shall

be listed as a second insured. The Company shall also include the municipalities served by the Department as additional insureds under the Company's comprehensive general liability policy or policies and on the Umbrella policy or policies. The Company will be responsible for premium payment and will receive loss proceeds on the part of the Department.

(5) The insurance policy shall provide that the insurance company shall have no recourse against the Department for payment of any premiums or for assessments under any form of policy.

(6) The Company shall be solely responsible to satisfy any and all deductibles and self-insured retentions contained in its insurance coverages as well as any excluded loss or losses if the same are within the Company's liability under this Agreement. The insurance may contain deductible limits to \$250,000. If the Company desires higher deductibles on policies other than workers compensation, it must first obtain the prior written consent of the Department, which consent the Department may withhold.

(7) Each company providing coverage required by this Agreement shall be licensed or approved by the Insurance Bureau of the State and shall have a financial rating no lower than XI and a policy holder's service rating no lower than (A-) as listed in the latest edition or interim report of Alfred M. Best's Key Rating Guide. The Company may request the Department to accept insurance companies with ratings below (A-) or XI; however, the Department is authorized to withhold such permission in its sole and absolute discretion.

(8) The Department reserves the right at any time during the term of this Agreement to give notice to the Company that the Department has determined that a policy or policies procured in furtherance of this Section 8 are unsatisfactory to the Department as to form or substance or that the Department has determined that an insurance company which has issued any policy in furtherance of this Section 8 has become unsatisfactory to the Department. If the Company receives such a notice from the Department, it shall immediately obtain a new and substitute policy or policies and submit the same to the Department for approval as provided in Section 8.01(d) as if the policy or policies were rejected by the Department in the first instance.

(9) The Company's failure to secure and maintain the insurance required under this Agreement shall not relieve the Company of its liability for any losses intended to be insured thereby. These insurance provisions shall not be construed or interpreted so as to conflict with the indemnification obligations of Section 6.

(10) The Company's failure to secure and maintain the insurance required under this Agreement, notwithstanding any other provision of this Section 8, shall be deemed an Event of Default for purposes of Section 9.01.

(11) The Company shall require all tiers of subcontractors to waive rights of recovery against the Department. The Department must be listed as an additional insured on a

primary and non-contributory basis under general liability, auto and umbrella policies as respects operations performed for the Company.

- (12) Broad form named insured endorsement shall apply to all policies.
- (13) Underwriting and rating data will be furnished to qualified bidders.

## **SECTION 9 EVENTS OF DEFAULT**

Section 9.01 Events of Default by Company. The following shall constitute Events of Default by the Company (each, a "Company Default") after the Commencement Date:

(a) to the extent such failures or refusals are not otherwise covered in this Section 9.01, persistent and repeated failure or refusal of the Company to perform timely any obligation under this Agreement, unless such failure or refusal is clearly recognized, justified and excused by the terms and conditions of this Agreement.

(b) failure of the Company to pay amounts owed to the Department under this Agreement within thirty (30) days following the date they become due and owing;

(c) failure of the Company to meet any NPDES permit conditions or requirements on a regular basis, unless such failure is clearly recognized, justified and excused by the terms and conditions of this Agreement;

(d) failure to comply with the Department's inspection rights as provided for in Section 4.06 and Exhibit 8;

(e) failure to secure and maintain the insurance required under this Agreement as provided in Section 8.02(a)(10);

(f) failure to maintain solvency, as determined under the applicable definition of "insolvent" contained in 11 U.S.C. §101(32), as amended. The occurrence of any of the following are deemed a failure to maintain solvency:

(1) Inability, failure, or refusal to pay debts as they mature; entry into an arrangement by the Company or the Guarantor with or for the benefit of their creditors; the Company's or the Guarantor's consent to or acquiescence in the appointment of a receiver, trustee, or liquidator for a substantial part of the Company's or the Guarantor's property; or

(2) a bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding instituted by or against the Company or the Guarantor under the laws of any jurisdiction, which proceeding is not dismissed within sixty (60) days; or

(3) any action or answer in a bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding in which the Company or the Guarantor approve of, consent to, or acquiesce in, any such proceeding; or

(4) the levy of any distress, execution, or attachment upon the property of the Company or the Guarantor which shall substantially interfere with its performance hereunder; provided, however, that with respect to the Company only, this form of insolvency shall not be deemed to have occurred if the insolvency is caused primarily by the Department's failure to make a payment due pursuant to Section 5 within forty-five (45) days of when it becomes due and payable;

(g) the default of the Guarantor under the Guarantee; or

(h) failure to secure and maintain the Letter of Credit as required by, and in accordance with, the terms set forth in Section 12.01.

Section 9.02 Events of Default by Department. The following shall constitute Events of Default on the part of the Department (each, a "Department Default") after the Commencement Date:

(a) to the extent such failures or refusals are not otherwise covered in this Section 9.02, persistent and repeated failure or refusal of the Department to perform timely any material obligation under this Agreement unless such failure or refusal is clearly recognized, justified and excused by the terms of and conditions of the Agreement; or

(b) failure of the Department to pay amounts owed to the Company under this Agreement within thirty (30) days following the time they become due and payable.

Section 9.03 Default Notices; Opportunity to Cure. With the exception of a termination for the reason described in Section 10.01(a)(2), this Agreement shall not be terminated for an Event of Default unless and until (i) the Party contemplating termination gives the offending Party written notice in reasonable detail of each Event of Default the offending Party is alleged to have committed or permitted (a "Default Notice"), and (ii) the offending party shall have failed to cure such Event of Default within thirty (30) days (or such longer period as may reasonably be required to diligently effect such cure) following delivery of the Default Notice to the offending Party. Notwithstanding the foregoing, if there are repeated Company Defaults under Section 9.01(a) through (d) then, regardless of attempts by the Company to cure the same, the Department, in its sole discretion, may terminate this Agreement without giving a Default Notice or affording the Company a period to cure.

## **SECTION 10 TERMINATION**

### **Section 10.01 Termination for Event of Default.**

#### **(a) Termination of Agreement for a Company Default.**

(1) If the Department gives the Company notice pursuant to Section 9.03 of the occurrence of a Company Default under Sections 9.01(a), (b) or (d), and the Company Default is not cured within the period set forth in Section 9.03, the Department may terminate this Agreement.

(2) Upon the occurrence of a Company Default under one or more of Sections 9.01(c) or (e) through (h), the Department may terminate this Agreement immediately by delivery of a Default Notice to the Company.

(b) Termination of Agreement for a Department Default. If the Company gives the Department a Default Notice pursuant to Section 9.03 of the occurrence of a Department Default, and such Department Default is not cured within the period set forth therein, the Company may terminate this Agreement.

**Section 10.02 Termination for Labor Unrest.** If, on or after the Commencement Date, personnel employed by the Company and performing services pursuant to the Company's obligations under this Agreement shall go on a labor strike or slowdown, or if a work stoppage, walkout or secondary boycott shall occur, for any reason or cause whatsoever, and such act or event effectively prevents the Company from performing its material obligations under this Agreement, the Department, during the pendency of the period in which performance is prevented, may, in its sole discretion, by notice to the Company, terminate this Agreement immediately.

**Section 10.03 Termination for Uncontrollable Circumstances.** If an Uncontrollable Circumstance shall occur after the Commencement Date relative to a material obligation of the Company or the Department under this Agreement and such Uncontrollable Circumstance or the effect thereof prevents performance of such material obligation for a period of thirty (30) days, the Department and the Company shall, during or after such thirty (30)-day period, meet to review the situation. If, despite the good faith efforts of the parties to reach an agreement, no agreement is reached within a reasonable time considering the nature and extent of the Uncontrollable Circumstance, either party may terminate this Agreement upon notice to the other party.

**Section 10.04 Termination for Insufficient Funding.** In the event sufficient funds to pay for the Service Fee are unavailable, through the failure of any entity to appropriate funds or otherwise, the Department shall have the right to terminate the Agreement upon thirty (30) days prior notice.

Section 10.05 Termination for Adverse Tax Treatment. If the IRS or any other federal or state taxing authority issues or fails to issue any ruling, or imposes any requirement or obligation, in connection with the Department, the Company or this Agreement, which would adversely affect the tax exempt status of any bonds issued by the Department (in the sole judgment of the Department), the Department may terminate this Agreement upon thirty (30) days notice to the Company.

Section 10.06 Termination for Breach of Assignment Provision. The Company will not (i) assign or transfer this Agreement or its right, title or interests or obligations therein, in whole or in part, or (ii) voluntarily or involuntarily undergo a Change in Control without, in each instance, the Department's advance written approval, which the Department has the sole discretion to withhold. Violation of this section will constitute a breach of the Agreement and the Department may, in its sole discretion, terminate the Agreement. All rights, title and interest of the Company will thereupon cease and terminate.

For purposes of this Section only, "Change in Control" shall mean:

(a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "1934 Act")) (a "Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the 1934 Act) of 20% or more of either (i) the then outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (ii) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); provided, however, that the following acquisitions shall not constitute a Change in Control: (x) any acquisition by the Company, (y) any acquisition by an employee benefit plan (or related trust) sponsored or maintained either by the Company or any corporation controlled by the Company (for purposes of this section, only, "Affiliate"), or (z) any acquisition by a corporation pursuant to a reorganization, merger or consolidation, if, following such reorganization, merger or consolidation, the conditions described in clauses (i), (ii) and (iii) of subsection (b) of this Section 10.06 are satisfied; or

(b) Approval by the shareholders of the Company of a reorganization, merger or consolidation, in each case, unless, following such reorganization, merger or consolidation, (i) more than 55% of, respectively, the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such reorganization, merger or consolidation in substantially the same proportions as their ownership, immediately prior to such reorganization, merger or consolidation, of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (ii) no Person (excluding the Company, any employee benefit plan (or related trust)

sponsored or maintained by the Company, by an Affiliate, or by such corporation resulting from such reorganization merger or consolidation and any Person beneficially owning immediately prior to such reorganization, merger or consolidation, directly or indirectly, 20% or more of the Outstanding Company Common Stock or Outstanding Voting Securities, as the case may be) beneficially owns, directly or indirectly, 20% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such reorganization, merger or consolidation or the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (iii) at least a majority of the members of the board of directors of the corporation resulting from such reorganization, merger or consolidation were members of the incumbent board at the time of the execution of the initial agreement providing for such reorganization, merger or consolidation; or

(c) Approval by the shareholders of the Company of (i) a complete liquidation or dissolution of the Company or (ii) the sale or other disposition of all or substantially all of the assets of the Company, other than to a corporation, with respect to which following such sale or other disposition, (x) more than 55% of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors is then beneficially owned, directly or indirectly, by all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such sale or other disposition in substantially the same proportion as their ownership immediately prior to such sale or other disposition, of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (y) no Person (excluding the Company and any employee benefit plan (or related trust) sponsored or maintained by the Company, by an Affiliate or by the corporation purchasing the assets and any Person beneficially owning, immediately prior to such sale or other disposition directly or indirectly, 20% or more of the Outstanding Company Common Stock or Outstanding Company Voting Securities, as the case may be) beneficially owns, directly or indirectly, 20% or more of, respectively, the then outstanding shares of common stock of such corporation and the combined voting power of the then outstanding voting securities of such corporation entitled to vote generally in the election of directors and (z) at least a majority of the members of the board of directors of such corporation were members of the incumbent board at the time of the execution of the initial agreement or action of the board providing for such sale or other disposition of assets of the Company.

#### Section 10.07 Remedies of the Department.

(a) If the Department terminates this Agreement pursuant to Sections 10.01(a) or 10.02, the Department shall have the right to seek legal and equitable remedies provided by law.

(b) If the Department shall terminate this Agreement pursuant to Section 10.02, the Department shall pay the Company in addition to those payments and reconciliation amounts specified in Section 10.10, the Company's out-of-pocket costs as of the date of the termination, which shall in no event be greater than the amount of one Billing Month's Fixed Fee determined



using the Billing Month of the termination. If the Department shall terminate this Agreement pursuant to Section 10.03 (unless there has been no meeting), 10.04 or 10.05, or for failure of the Parties to agree on a re-negotiation of this Agreement, the Department shall pay the Company, in addition to those payments and reconciliation amounts specified in Section 10.10, its unamortized costs incurred in, developing, starting-up and performing its obligations under this Agreement, including (i) excess personnel costs during the first two (2) years following the Commencement Date as well as its work-in-process at the time of termination and (ii) the aggregate amount expended by the Company under the plans listed below and their successor plans:

- (a) IWC Resources Corporation Employees' Pension Plan;
- (b) IWC Resources Corporation Executive Supplemental Benefit Plan;
- (c) IWC Resources Corporation Deferred Compensation Plan;
- (d) Medicare Supplemental Health Insurance; and
- (e) Group Life, Health, Dental and Disability Plan of IWC Resources Corporation, as it relates to medical benefits for retirees,

after substantiating such costs to the reasonable satisfaction of the Department, not to exceed one Billing Year's Fixed Fee determined using the Billing Year of the termination.

Section 10.08 Remedies of the Company. If the Company terminates this Agreement pursuant to Section 10.01(b) or 10.03, the Department shall pay the Company, in addition to those payments and reconciliation amounts specified in Section 10.10, the Company's unamortized costs incurred in, developing, starting-up and performing its obligations under this Agreement, including (i) excess personnel costs during the first two (2) years following the Commencement Date as well as its work-in-process at the time of termination and (ii) the aggregate amount expended by the Company under the plans listed below and their successor plans:

- (a) IWC Resources Corporation Employees' Pension Plan;
- (b) IWC Resources Corporation Executive Supplemental Benefit Plan;
- (c) IWC Resources Corporation Deferred Compensation Plan;
- (d) Medicare Supplemental Health Insurance; and
- (e) Group Life, Health, Dental and Disability Plan of IWC Resources Corporation, as it relates to medical benefits for retirees,

after substantiating such costs to the reasonable satisfaction of the Department, not to exceed one Billing Year's Fixed Fee determined using the Billing Year of the termination.

Section 10.09 Operations Cooperation and Transfer of Personnel.

(a) If the Department or the Company terminates this Agreement, the Company shall, from the date of the notice of termination make fully available its managers and employees performing services at the Waterworks for at least six months after the termination date pursuant to this Section 10.09 to continue to perform all the operation, maintenance, repair and management services contemplated in this Agreement. The Department may determine that it requires a lesser amount of services, managers, employees and intellectual property in order to provide a smooth and orderly transition of the operations and maintenance of the Waterworks to Department administrators, managers and personnel or, as applicable, the Department's contracted private Company; provided, however, in no event shall such provision of services by the Company exceed the twentieth (20<sup>th</sup>) anniversary date of this Agreement as measured from the Commencement Date. The Company shall immediately transfer to the Department all intellectual property owned by the Department and used or created by the Company during the term of the Agreement, including, but not limited to, the Department's licenses, data, source codes and software, used in, updated or created for the operation of the Waterworks. The Company shall fully cooperate with the Department to effectuate such a transition, including the provision of training and "know-how" in the procedures and techniques employed by the Company in meeting its obligations under Section 4.01. The Department shall determine the number of days, if any, not to exceed ninety (90) days, that the Company shall comply with this Section 10.09(a).

(b) Notwithstanding the termination of this Agreement, the Department shall compensate the Company for performing the services specified in Section 10.09(a) on a daily basis in an amount equal to the daily allocated cost of such services calculated on the basis of the Fixed Fee for the last full Billing Month immediately prior to the termination date; provided, however, such Fixed Fee shall be (1) calculated on the basis of a daily Fixed Fee and (2) reduced on a pro rata basis to reflect the number of Company employees performing services and the operations and maintenance services performed (the management fee and profit shall be reduced pro rata to reflect the reduction in personnel and services) on a daily basis. The Company shall invoice the Department for such Fixed Fee as calculated pursuant to this Section 10.09(b) within fifteen (15) days after the end of each month after the termination date, and the Department shall pay to the Company the amount due and owing pursuant to this Section 10.09(b) within forty-five (45) days thereafter. The Company shall comply with the invoicing and date and information provisions of this Agreement in submitting any such invoice to the Department.

(c) Upon receipt of notice of termination, the Company shall, at the option of the Department, cancel outstanding commitments for procurement of vehicles, services, materials and supplies. In addition, the Company must exercise all reasonable diligence to cancel or divert to other activities its outstanding commitments for procurement or personal services, if the Department, in its sole discretion so requires. If, after serving notice of termination for

nonperformance or default, the Department determines that the reasons for nonperformance or default are excusable and are not the fault of and beyond the control of the Company, the Department may, in its sole discretion, authorize the Company to resume work.

(d) The Company recognizes and understands that the transition outlined in this Section 10.09 may well result in the Department employing or attempting to employ some or all of the managers or personnel employed by the Company and performing services at the Waterworks. The Company shall facilitate the transfer and employment of any manager(s) or personnel who may desire to be employed by the Department. The Company shall have no covenant not to compete or other restrictions on the Department hiring Company employees working on the Waterworks.

(e) Upon the termination or expiration of this Agreement, the Company shall assign to the Department its interest in all contracts entered into by the Company relative to the Waterworks if requested by the Department, if such contracts do not prohibit such assignment. The Department's right to request assignment of certain contracts shall not be read as an obligation by the Department to assume all or any of such contracts. The Department shall, however, assume the payment and performance of all contracts assigned to it and shall pay any penalties and costs incurred by the Company with respect to the assignment of such contracts. The Company shall exercise all reasonable efforts in negotiating contracts relative to the Waterworks to (1) obtain the written consent of the other parties to such contracts to the assignment by the Company of its rights therein to the Department and (2) secure contract terms and conditions that do not include damages or penalties to any assignee with respect to any assignment.

(f) In the event of a Company Default, the Department may, in its discretion, determine to perform any Company obligation under this Agreement that the Company has failed to perform. The Department may issue a Default Notice informing the Company of the Department's intent to perform such obligation(s). The Company shall be obligated to reimburse the Department for all costs the Department incurs in the performance of such Company obligation(s). The Department's performance under this paragraph (f) shall not effect a cure of the Company Default; such cure period shall be tolled during the period the Department is performing the Company's obligations.

(g) If the Department has notified the Company of a Company Default and the Department determines, in its sole discretion, that the public supply of water or the public safety is threatened by the Company Default, the Department may assume operation of the Waterworks pending termination of this Agreement and direct Company employees, or contract with others, to take such actions as the Department deems necessary or appropriate to assure the public supply of water or protect the public safety. Any costs incurred by the Department in such respect shall be paid by the Company.

#### Section 10.10 Manner of Termination Payment.

All performance and payment obligations under this Agreement, including payment of the Service Fee that is due and owing, shall continue pursuant to the terms of this Agreement until this Agreement terminates and any amount accrued but unpaid prior to termination shall, if due and owing, be payable in accordance with this Section 10.10. Except as otherwise specifically provided in this Agreement with respect to the time of payment following termination, within ninety (90) days following termination of this Agreement, the Department and the Company shall reconcile all amounts then due and payable to each other under the terms of this Agreement. Upon reaching, as a result of such reconciliation, the total amount of the outstanding unpaid balance which the Department and the Company owe the other, the Department and the Company shall, within thirty (30) days thereafter, make the final payments in complete discharge of their obligations under this Agreement, except those obligations which survive the termination or expiration of this Agreement. Payment obligations under this Section are subject to Sections 13.14 and 13.15.

#### Section 10.11 Remedies.

(a) The remedies specifically set forth in this Agreement are exclusive, and the Parties waive any other remedies they may have at law or in equity; provided, however, that either Party may seek judicial enforcement of any remedy provided herein and any amounts payable hereunder. The Parties agree and acknowledge that the damages provided for in this Section 10 are to be liquidated damages and shall be the sole and exclusive measure of damages or liability for termination of this Agreement by a Party under this Section 10 and that the provisions for damages set forth herein are intended to measure as accurately as possible the direct damages of the Party entitled to such damages and are not intended to include punitive, special, consequential, incidental or indirect damages.

Section 10.12 Survival. This Section 10 shall survive the termination or expiration of this Agreement.

Section 10.13 Employee Benefit Plans. Effective as of the date on which this Agreement terminates, the Company shall spin off, and the Department shall assume, or shall cause a successor contractor to assume: (i) the assets and liabilities of all employee benefit plans attributable to employees of the Waterworks and persons retired from the Waterworks and (ii) the assets and liabilities related to the Retiree Medical Benefits.

## **SECTION 11**

### **REPRESENTATIONS**

Section 11.01 Representations of Department. The Department represents to the Company:

(a) The Department is duly organized and an existing special taxing district under the laws of the State and is duly authorized to carry on the governmental functions and operations as contemplated by this Agreement and Indiana Code 8-1.5-4.

(b) As of the Contract Date, the Department has the power, authority and legal right to enter into and perform this Agreement and the execution, delivery and performance hereof by the Department (1) have been duly authorized by the Department, acting by and through its Board, (2) do not require any other approvals by any other governmental officer or body, other than (A) USEPA, IDNR, or IDEM approval, if required, and (B) those permits or approvals that may have to be renewed or reissued during the term of this Agreement, (3) do not require any consent or referendum of voters, (4) will not violate any judgment, order, law or regulation applicable to the Department, and (5) do not constitute a default under, or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Department under any agreement or instrument to which the Department is a party or by which the Department or its assets may be bound or affected.

(c) This Agreement has been duly entered into by the Department and, as of the Contract Date constitutes a legal, valid and binding obligation of the Department, enforceable in accordance with its terms, subject to (1) the applicable bankruptcy, reorganization, moratorium or similar laws affecting enforcement of creditors' rights or remedies generally, (2) general equitable principles concerning remedies, (3) limitations on the enforceability of rights to indemnification by federal or State laws or regulations or public policy and (4) the valid exercise of the constitutional powers of the Department, the State and the United States of America.

(d) To the best of the Department's information and belief and without independent investigation, as of the Contract Date, there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or threatened against the Department, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Department of its obligations hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Department in connection with the transaction contemplated hereby.

(e) The Department reviewed the representations and warranties contained in the Asset Purchase Agreement.

(f) The Company understands and acknowledges that none of the Department Parties make any representation or warranty, express or implied, as to the accuracy or completeness of the due diligence materials reviewed by the Company. The Company agrees that none of the Department Parties shall have any Liability to the Company or to any Company Party relating to or resulting from the use of the due diligence materials or any errors therein or omissions therefrom. Only those representations and warranties that are made in this Agreement will have any legal effect.

(g) Except as set forth in Exhibit 13, there are no actions, suits, investigations, or proceedings pending against the City or the Department, or to the knowledge of the City or the Department, threatened, asserting any right or entitlement to Retiree Benefits.

Section 11.02 Representations of Company. The Company hereby represents to the Department that subject to the Disclosures in Exhibit 9:

(a) The Company is qualified to do business in the State and is duly qualified to do business wherever necessary to carry on the business and operations contemplated by this Agreement.

(b) As of the Contract Date, the Company has the power, authority and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery and performance hereof, (1) have been duly authorized, (2) do not require the approval of any governmental office or body, other than (A) USEPA, IDNR, or IDEM approval, if required, and (B) those permits or approvals that may have to be renewed or reissued during the term of this Agreement, (3) will not violate any judgment, order, law or regulation applicable to the Company or any provisions of the Company's articles of incorporation and by-laws, and (4) do not constitute a default under or result in the creation of, any lien, charge, encumbrance or security interest upon any assets of the Company under any agreement or instrument to which the Company is a party or by which the Company or its assets may be bound or affected.

(c) As of the Contract Date, there has been no material adverse change in the Company's or the Guarantor's financial condition which would impair the Company's ability to perform its obligations under this Agreement or the Guarantor's ability to fulfill its obligations under the Guarantee. After the Contract Date, the Company and Guarantor shall immediately report any material adverse change in its business to the Department.

(d) This Agreement has been duly entered into and delivered and constitutes a legal, valid and binding obligation of the Company, fully enforceable in accordance with its terms, subject to (1) the applicable bankruptcy, reorganization, moratorium or similar laws affecting enforcement of creditors' rights or remedies generally, (2) general equitable principles concerning remedies and (3) limitations on the enforceability of rights to indemnification by federal or state laws or regulations or public policy.

(e) As of the Contract Date, there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of the Company's knowledge, threatened against the Company, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Company of its obligations hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the Company in connection with the transaction contemplated hereby.

(f) As of the Contract Date, (i) the Company's proposal is genuine and not collusive or a sham, (ii) the Company has not colluded, conspired, connived or agreed directly or indirectly with any other proposer or Person, to put in a sham proposal, or to refrain from proposing, and (iii) the Company has not in any manner directly or indirectly, sought by agreement or collusion, or communication or conference with any Person, to fix the prices of its proposal or proposals of any other proposer or to secure any advantage against any Person interested in this Agreement. All statements contained in the Company's proposal are true, and the Company has not directly or indirectly submitted its proposal or the contents thereto, to any association or to any member or agent thereof.

(g) By signing this Agreement, the Company acknowledges it has visited the key sights and has been provided access to documents as deemed appropriate by the Department. The Company also acknowledges that it has been provided the opportunity to request, and has been provided, additional documentation as it deems appropriate in order to satisfy its due diligence requirements. Company understands that risk is inherent in any due diligence process and that the due diligence process and associated price for the management of the Waterworks reflects the risk associated with this process.

(h) The provisions of this Agreement related to exclusive jurisdiction are enforceable against each Company Party.

Section 11.03 Materiality of Representations. The representations enumerated in Sections 11.01 and 11.02 are material for purposes of this Agreement and misrepresentations are grounds for an Event of Default.

## SECTION 12

### LETTER OF CREDIT

Section 12.01 Irrevocable Standby Letter of Credit. During the term of this Agreement and continuing thereafter until all monetary obligations of the Company have been discharged, the Department shall be provided an irrevocable, direct draw letter of credit (the "Letter of Credit") in a form satisfactory to the Department, and in the amount of forty million dollars (\$40,000,000) (the "Base LC Amount"). Upon the occurrence of a Company Default, the Department shall be permitted to make one or more draws on such Letter of Credit in amounts which Department determines, in its reasonable discretion, to be appropriate. Each bank at which such Letter of Credit is established and/or maintained shall be subject to the approval of the Department. Each such bank shall be instructed that it is to honor any draft the Department may present, without prior notice to the issuer. Also, such bank shall be instructed that it shall have no objection rights to payment to the Department and that the Company or the Guarantor shall not have first claim rights to such Letter of Credit. If the Letter of Credit is not renewed by the bank and a substitute Letter of Credit is not received by the Department at least five (5) business days before the expiration date (or if the Department does not receive an irrevocable commitment from another bank acceptable to the Department to issue a replacement standby Letter of Credit, effective upon the expiration of the then-effective Letter of Credit), then the Department shall be able to draw the Letter of Credit in full, regardless whether the Company is in default. In the event of a partial draw on the Letter of Credit, within five (5) business days thereafter, the Company shall cause the amount drawable under the Letter of Credit to be restored to the Base LC Amount. The Company will be repaid for any draws made on the Letter of Credit by the Department:

(a) to the extent the amount drawn exceeds the amount of damages to the Department if the Company cures the Company default; and

(b) to the extent the amount drawn exceeds the amount of damages to the Department if the Company reinstates an expired Letter of Credit.

## SECTION 13

### MISCELLANEOUS

Section 13.01 Term. Unless sooner terminated in accordance with its term, this Agreement shall expire on the twentieth anniversary of the Commencement Date.

Section 13.02 Assignment. The Department reserves the right to assign its rights and obligations under this Agreement to any validly constituted agency, department or authority of the State, or the City or a duly created municipal corporation or authority. The Department will provide the Company with prior notice of such an assignment. Such assignee will have full authority to enforce and manage the Agreement, unless otherwise specified by the Department.



The Company will not assign or transfer the Agreement or its right, title or interests or obligations therein, in whole or in part, without in each instance the Department's advance written approval, which approval is in its sole discretion; provided, however, that the Company may assign its interest without such consent to any Affiliate, successor or Parent of the Company if the Company shall remain liable for all obligations under this Agreement, and the Guarantors, pursuant to the Guarantee, fully guarantee the performance of such assignee's obligations under this Agreement. Violation of the terms of this paragraph will constitute a breach of the Agreement and the Department may, in its discretion, cancel the Agreement upon written notice. All rights, title and interest of the Company will thereupon cease and terminate. It is understood and agreed between the Parties that this Section 13.02 shall not be construed or interpreted to restrict the Company's ability to employ subcontractors in connection with performance of portions of its obligations hereunder.

Section 13.03 Equal Employment Opportunity, Local Involvement, Minority Owned Enterprises, Women Owned Enterprises.

(a) To the extent not inconsistent with Section 4.02, the Company shall use its best efforts consistent with Applicable Law to ensure that minority business enterprises ("MBEs") and women-owned business enterprises ("WBEs") shall have the maximum practicable opportunity to compete for work with respect to this Agreement. The Company is required to comply with all applicable federal, State and local directives respecting equal employment opportunity programs.

(b) The Company shall maximize involvement of a diversified group of local firms ("Local Providers") that have capabilities to provide and complete the Services and those Additional Services implemented within the District described in Section 4.05(f) ("Local Services"). Under the terms of this Agreement, the Company shall provide and complete Local Services in accordance with Exhibit 12. The Company shall:

(1) require Local Providers either to (i) maintain their principal office in the District or (ii) provide and complete the Local Services with personnel 90% of whom have as their assigned location an office in the District;

(2) require the Local Providers to maintain and expand existing workforce in the District;

(3) not contract with any Local Provider without first notifying the Department of such anticipated contract and providing the Local Provider's name, address, telephone number, capabilities and description of work to be performed by the Local Provider;

(4) exercise the appropriate supervision of and control over the Local Providers so that the Local Providers will perform the Local Services in a manner which will not damage the Company and/or the Department;

(5) be responsible for all aspects of performance of the Local Providers in performing the Local Services; and

(6) prohibit any one subcontractor to perform more than 30% of the Local Services in any one year; provided, however, that the Department may waive such prohibition, in its sole discretion.

The Department, in its sole discretion, may waive this provision or part thereof upon proper documentation by the Company of the lack of available, capable resources by Local Providers for a particular task.

(c) The Company shall use its best efforts to utilize District-based minority-owned and women-owned business enterprises in connection with the services to be provided under this Agreement in an amount equal to at least twelve percent (12%) of the purchases/contracts available for placement on an annual basis, comprising at least ten percent (10%) MBEs and two percent (2%) WBEs. The Company shall utilize best efforts to exceed both goals and progressively increase participation during the term of the Agreement. The Company shall use its best efforts to utilize MBEs and WBEs certified with the City, or any political subdivision in the District, through the Division of Equal Opportunity.

The Department, in its sole discretion, may waive this provision, or any part thereof, upon receipt of a written report from the Company describing minority programs implemented and maintained by Company Parties that do not qualify as MBEs or WBEs, but which satisfy the Department's desire to promote minority business in the District.

Section 13.04 Further Assurances. Each Party agrees to execute and deliver any instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Agreement. The Department shall execute such further instruments and documents and take such action as may be reasonably requested by the Company and not inconsistent with the provisions of this Agreement and not involving the assumption of obligations other than those provided for in this Agreement to carry out the intent of this Agreement.

Section 13.05 Relationship of Parties. (a) Except as otherwise explicitly provided herein, neither the Company nor the Department shall have any responsibility whatsoever with respect to services provided or contractual obligations assumed by any Company Party or Department Party, respectively, and nothing in this Agreement shall be deemed to constitute any Company Party or Department Party a partner, agent, employee or legal representative of any other Party or to create any fiduciary relationship between or among the Parties. The Parties agree that the Company has, on its behalf and on behalf of any Company Parties performing services, entered into this Agreement and shall be performing the services contemplated herein as an independent contractor. As an independent contractor the Company and the Company Parties are solely responsible for the means, methods, techniques, procedures and schedules

used to perform the work. The Company has the sole right to control and direct the means, manner and method by which the obligations of this Agreement are satisfied.

(b) the Revenue Procedure provides that the Company must not have any role or relationship with the Department that, in effect, substantially limits Department's ability to exercise its rights, including cancellation rights, under the contract. The Revenue Procedure contains a safe harbor for this element. In order to satisfy this safe harbor, the Company agrees to the following requirements:

(1) Not more than 20% of the voting power of the governing body of the Department, the City or the Bond Bank in the aggregate can be vested in the Company and its directors, officers, shareholders, and employees.

(2) Overlapping board members cannot include the chief executive officers of the Company or its governing body or the Department, the City or the Bond Bank or its respective governing body.

(3) The Department, the City, the Bond Bank and the Company under this Agreement cannot be related parties.

Nothing in this Agreement may be interpreted to mean the Department may exercise control over how services are provided by the Company nor how the Company satisfies its obligations under the Agreement. Nothing in this Agreement may be interpreted to give the appearance that the Company possesses the apparent or actual authority to act or speak for the Department and the Company shall not by words, act or representations convey to the general public, any person or any governmental unit the impression that the Company has the authority to speak or act for the Department. If any Person believes that the Company has the necessary power to bind the Department or believes that the Department has the power to control how services are provided by the Company. The Company shall take actions as are necessary to correct the erroneous inferences and prevent reliance on such a mistake of fact.

(e) The Department reserves the right to adopt a bond resolution to acquire the Waterworks, to issue its bonds as set forth therein, and to sell those bonds to the Bond Bank. The terms of the Bond Documents shall govern any conflicts or differences between this Agreement, the Bond Documents and the RFP.

#### Section 13.06 Notices and Authorized Representatives.

(a) All notices, consents, approvals or communications required or permitted hereunder shall be in writing and shall be transmitted by (1) registered or certified mail, postage prepaid, return receipt requested, with notice deemed to be given upon receipt, or (2) delivered by hand or nationally recognized courier service, or (3) if sent by telex or facsimile transmission with confirmed receipt thereof, and addressed as follows:

To the Company:

James H. Buckler  
Operations Manager  
USFilter Operating Services, Inc.  
1220 Waterway Boulevard  
Indianapolis, Indiana 46202

If By Hand:

same

Copy to:  
John M. Wood  
Vice President  
USFilter Operating Services, Inc.  
55 Shuman Boulevard  
Naperville, Illinois 60563

Copy to:  
T. Michael O'Brien  
Vice President and General Counsel  
USFilter Operating Services, Inc.  
55 Shuman Boulevard  
Naperville, Illinois 60563

To the Department:

Department of Waterworks  
Consolidated City of Indianapolis, Marion County, Indiana  
Suite 1601, City-County Building  
200 E. Washington Street  
Indianapolis, Indiana 46204  
Fax: (317) 327-3968

Copy to:

Consolidated City of Indianapolis, Marion County, Indiana  
Suite 1601, City-County Building  
200 E. Washington Street  
Indianapolis, Indiana 46204  
Attn: A. Scott Chinn, Esq., Corporation Counsel  
Fax: (317) 327-3968

Changes in the respective addresses to which such notices may be directed may be made from time to time by any Party by written notice to the other Party.

(b) For purposes of this Agreement, the Parties' Authorized Representative is as follows:

For Company: James H. Buckler

For Department: Secretary/Treasurer of the Board

Either Party may change its authorized representative at any time by written notice to the other Party.

Section 13.07 Waiver. The waiver by either Party of a default or a breach of any provision of this Agreement by the other Party shall not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of such default or breach or any subsequent default or breach.

Section 13.08 Entire Agreement; Modifications and Amendments. The provisions of this Agreement, including the present and all future Exhibits, together with the RFP, the RFP questions and the Department's answers, the Proposal, the Revised Proposal, the video tape of the presentation given to the Department on February 19, 2002, the "best and final offers," the letter accompanying the "final and best offers," and the Bond Documents (the "Ancillary Agreements"), shall (a) constitute the entire agreement between the Parties for the operation and maintenance of the Waterworks and except as specifically set forth herein, such Ancillary Agreements shall supersede any negotiation, proposal or agreement, written or oral, prior to the date of each Ancillary Agreement, there being no agreements or understandings other than those written or specified herein, (b) to the extent the information contained in two or more of the above referenced Ancillary Agreements directly conflicts, the documents shall govern in the following order of priority: Bond Documents, Management Agreement and Exhibits, "best and final offers," including the letter accompanying "best and final offers," Revised Proposal, Proposal, RFP questions and Department answers, video tape of the presentation given to the Department on February 19, 2002, (c) this Agreement shall be deemed to include the oral and written promises made in the Ancillary Agreements to the extent such promises do not conflict with the Agreement, and (d) unless otherwise specifically recognized in this Agreement, the Ancillary Agreements and this Agreement shall not be modified or amended except by written agreement duly entered into and executed by the Parties with the same formality as this Agreement.

Section 13.09 Headings. Captions and headings and the Table of Contents in this Agreement, exclusive of Exhibits, are for ease of reference only and do not constitute a part of this Agreement.

Section 13.10 Governing Law. This Agreement and any questions concerning its validity, construction or performance shall be governed exclusively by the laws of the State, without respect to conflicts of law principals and irrespective of the place of execution or of the order in which the signatures of the Parties are affixed or of the place or places of performance.

Section 13.11 Consent to Jurisdiction. The Company, for itself and on behalf of the Company Parties hereby irrevocably consents to the personal and subject matter jurisdiction of the Marion Circuit Court, Indianapolis, Indiana and the venue for all legal actions before the Circuit Court for Marion County, Indiana, in connection with any action or proceeding arising out of or relating to the Agreement or any document or instrument delivered with respect to any of the obligations hereunder, and waive personal service of any process in connection with any such action or proceeding and agrees that the service thereof may be made by hand delivery or by certified or registered mail directed to the other party and its counsel at its address as set forth in this Agreement. The Company, for itself and on behalf of the Company Parties, hereby irrevocably consents to the jurisdiction of the IURC and IDEM in connection with any of the responsibilities undertaken by the Company as set forth in this Agreement.

Section 13.12 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original.

Section 13.13 Severability. In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, supplemented, or otherwise affected by such action, remain in full force and effect.

Section 13.14 Interest on Overdue Payments. All payments to be made under this Agreement by either Party outstanding after the applicable due date shall be compounded annually at the prime rate of National City Bank of Indianapolis, Indiana.

Section 13.15 Payment Disputes. If any Party shall dispute an amount owing to the other Party, such Party shall:

(a) give notice to the other Party of such disputed amount together with sufficient information to allow the other Party to understand the nature of the dispute delivered on or before the due date of the amount disputed; and

(b) pay all undisputed amounts on the due date. Interest at the rate specified in Section 13.14 shall accrue from the original due date on disputed amounts, or the portions thereof, to the Party which is ultimately determined to be entitled to such disputed amount, or any portions of such disputed amounts.

Section 13.16 Liability of Officers and Employees. No member of the Board nor any director, officer, agent, consultant, representative or employee of either Party shall be charged personally by the other or held contractually liable thereto under any term or provision of this Agreement, because of either Party's execution or attempted execution or because of any breach or alleged breach thereof; provided, however, that all Persons remain responsible for any of their own criminal actions.

Section 13.17 Pledge of Credit. The Company shall not pledge the Department's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgment, lien or any form of indebtedness or the Department's revenues therefrom. The Company further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

Section 13.18 Third Party Beneficiary. This Agreement is intended to be solely for the benefit of Company and Department and their successors and permitted assigns and is not intended to and shall not infer any rights or benefits on any third party not a signature hereto, except as specifically set forth herein.

Section 13.19 Public Relations. Within one year after the Commencement Date, the Company shall implement a public relations program approved by the Department, including:

- (a) a public outreach program; and
- (b) a technical advisory group composed of academic and industry experts that will report to and serve at the pleasure of the Department.

The Company shall annually report the Department its public relation activities in the District.

Section 13.20 Condensed Schedule. Company hereby acknowledges and accepts that the schedule for the process of selection for this Agreement was condensed. The Department provided access to all documents it deemed appropriate and provided access to documents as requested by any offeror, subject to its discretion. Additionally, tours of specific facilities were conducted. Company was also encouraged to perform its own evaluation or inspection of sites, facilities, information (i.e. reservoirs, intakes, towers, web-sites, etc.) to those areas that are considered public access and do not require the approval of the Department or IWC.

Should material variances of cost estimates, prices, values, etc. be discovered after the execution of the Agreement for operations of these Waterworks, the condensed schedule of this process and any associated effects of this condensed schedule cannot be considered grounds for changing any prices or parts of the Company's proposal as submitted.

The schedule of events follows:

<b>EVENT</b>	<b>DATE</b>
RFQ Issued	December 4, 2001
LOQ Due	December 14, 2001 (unless submitted with Proposal)
RFP Issued	December 21, 2001
First RFP Notice	December 28, 2001
Deadline for Written Questions; Second RFP Notice	January 7, 2002
Answers to Written Questions	January 14, 2002
Proposals Due	February 8, 2002
Negotiations of Best and Final Offers End	February 25, 2002
Management Agreement Recommended to the Board	February 26, 2002
Management Agreement Approved by the Board, subject to City-County Council Approval	March 5, 2002
Management Agreement Approved by City-County Council	March 18, 2002
Execution of Management Agreement	March 21, 2001
Company begins Management of the Waterworks	April 30, 2002

Section 13.21 Observation Rights. Any member of the Board or any person designated by the Board shall have observation rights with respect to the Company's board meetings.



Section 13.22 Retainage of Intellectual Property Rights.

(a) The Company hereby grants to the Department the irrevocable and unrestricted right to use all formulas, processes, know-how, technology, innovations, computer software, trade secrets and other intellectual property (the "Intellectual Property") owned by the Company or its Affiliates on the Commencement Date and used, developed, upgraded, enhanced or otherwise improved by the Department or the Company and/or its Affiliates in connection with the performance of their obligations pursuant to this Agreement, both during the term of this Agreement and after its expiration or termination; provided, however, the Department may not sell, license or formally authorize any other Person to use the Intellectual Property, but the Department and its employees and representatives may discuss, publish or otherwise freely and publicly communicate information concerning the Intellectual Property. Any license the Department has under this Section 13.22 shall not be transferable by the Department. The Department acknowledges and agrees that the Intellectual Property owned by the Company or its Affiliates on the Commencement Date and used, developed, upgraded, enhanced or otherwise improved by the Department or the Company and/or its Affiliates in connection with the performance of their obligations pursuant to this Agreement shall remain the property of the Company or its Affiliates both during the term of this Agreement and after its expiration or termination.

(b) The Department hereby grants to the Company and its Affiliates the irrevocable and unrestricted right to use all the Intellectual Property owned by the Department on the Commencement Date and used, developed, upgraded, enhanced or otherwise improved by the Company and/or its Affiliates or the Department in connection with the performance of their obligations pursuant to this Agreement, both during the term of this Agreement and after its expiration or termination; provided, however, the Company may not sell, license or formally authorize any other Person to use the Intellectual Property, but the Company and its Affiliates and their employees and representatives may discuss, publish or otherwise freely and publicly communicate information concerning the Intellectual Property. Any license the Company and its Affiliates have under this Section 13.22 shall not be transferable by the Company or its Affiliates. The Company acknowledges and agrees that the Intellectual Property owned by the Department and used, developed, upgraded, enhanced or otherwise improved by the Department or the Company and/or its Affiliates in connection with the performance of their obligations pursuant to this Agreement shall remain the property of the Department both during the term of this Agreement and after its expiration or termination.

(c) For purposes of preserving the Department's and the Company and its Affiliates' right to use the Intellectual Property after termination of the Agreement, the Parties hereby agree to escrow the Intellectual Property with a mutually agreed to third-party escrow agent pursuant to mutually acceptable terms and conditions.

Section 13.23 Retainage of Patented Invention Rights.

(a) The Company retains exclusive rights to all its patented inventions and, subject to Section 13.22, copyrighted materials, developed by the Company in connection with the performance of its obligations pursuant to this Agreement, provided that the Company will, at the expiration or termination of this Agreement, grant to the Department, a non-exclusive, non-transferable permanent license to use such inventions in the Waterworks for an annual fee of one dollar (\$1.00).

(b) The Department retains exclusive rights to all its patented inventions and, subject to Section 13.22, copyrighted materials, developed by the Department in connection with the performance of its obligations pursuant to this Agreement, provided that the Department will, at the expiration or termination of this Agreement, grant to the Company and its Affiliates, a non-exclusive, non-transferable permanent license to use such inventions in the Waterworks for an annual fee of one dollar (\$1.00).

(c) For purposes of preserving the Department's and the Company and its Affiliates' right to use the patented inventions and copyrighted materials after termination or expiration of this Agreement, the Parties hereby agree to escrow the patented inventions and copyrighted materials and the Intellectual Property with a mutually agreed to third-party escrow agent pursuant to mutually acceptable terms and conditions.

Section 13.24 Assignment of Rights Against NiSource Inc. To the extent permitted by law, the Department will assign and subrogate to the Company any rights, remedies or other claims that it may have against NiSource Inc. for any default or breach of representations and warranties concerning the Waterworks or the transactions otherwise contemplated hereby, which default or breach causes or may cause damage to the Company.

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In Witness Whereof, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of March 21, 2002.

"DEPARTMENT"

The Consolidated City of Indianapolis

By: Department of Waterworks

By: \_\_\_\_\_  
John Mutz  
Chairman

Approved as to form and legality.

\_\_\_\_\_  
A. Scott Chinn  
Counsel to the Board of the Department  
of Waterworks

"COMPANY"

USFilter Operating Services, Inc.

By: \_\_\_\_\_  
Ron P. Davis  
Executive Vice President